OFFICE SUPREME COURT U.S.
FILED
NOV 15 1890
JAMES H. McKENNEY, CLERK.

U. S. SUPREME COURT

No. 467.

THE STATE Ex. Rel., THE SOUTHERN BANK

vs.

THE CITY OF NEW ORLEANS.

Reply brief on motion to dismiss.

B. F. JONAS,
HENRY C. MILLER.
Of Counsel for the City.

L. GRAHAM & SON, BRIEF PRINTERS, 127 GRAVIER STREET.

U. S. SUPREME COURT

No. 467.

THE STATE Ex. Rel., THE SOUTHERN BANK

vs.

THE CITY OF NEW ORLEANS.

Reply brief on motion to dismiss.

If consistently with the rules of the Court, the defendant in error, is entitled to reply to the brief of plaintiff in error, on this motion, in which reference is made to another brief filed by the relator under the 21st rule, then, the defendant in error, submits this supplemental brief.

The decisions relied on by the plaintiff in error to sustain the jurisdiction of this court in a writ of error to review the decision of the Supreme Court of Louisiana, are, 9th Wallace, p. 50, 16 Wallace, 678, 13 Wallace, 648. There is no decision on p. 698 of the 17th volume. The cases of 9th Wallace, p. 50, and 16 Wallace, p. 678, were writs of error to the Circuit Court of the United States. Those decisions affirm that where this Court has jurisdiction, it will not, in a certain class of cases, follow State decisions. But jurisdiction on writs of error to the National Courts, depends on the amount involved; jurisdiction on writs of error to State Courts, depends on the nature of the issues raised and decided. Revised Statutes, §. 709. It comes to this, then, that to sustain the jurisdiction here, on a writ of error to a State Court, that jurisdiction depending on the issues raised, and the adjudication upon them, the plaintiff in error refers to cases of writs of error to Circuit Courts of the United States, in which jurisdiction arises from the amount involved. Whether this Court, will follow the decision of the Supreme Court of Louisiana, in its construction of the State Constitution, in a case properly before this Court, is an issue to which the two cases cited, are manifestly pertinent. But the question here is, whether this Court has any jurisdiction at all, and that is to be solved by the character of the issues, and of the adjudication upon those issues. The last case cited is 13th Wall., p. 646, in which the writ of error was to the State Court, to review a decision which upheld the validity of an article in the Constitution of Georgia, forbidding the enforcement of slave contracts. There was conspicuous in that case, what the defendant in error contends, is absent here. There was drawn in question the validity of an article of the Constitution of the State impugned as repugnant to the Constitution of the United States, because the article impaired the obligation of slave contracts, and the decision sustained the validity of the article in the Constitution of the State. Every requirement to give jurisdiction to this Court, over the decision of the State Court, was completely furnished. Here, the controlling decision is, that the alleged contract, *i. e.* the tax itself never existed, because that form of taxation was prohibited by the State Constitution. It is not the decision maintaining a statute, drawn in question as impairing the contract. The decision is against the pretended contract itself. Where then is the basis for the jurisdiction ?

The motion to dismiss a writ of error to a State Court, for want of jurisdiction, requires an examination of the decision of the State tribunal, to ascertain whether the adjudication was within or without the explicit tests, prescribed as necessary to give jurisdiction. The defendant in error moving to dismiss, in its brief directed the attention of the Court to the decision of the Supreme Court of Louisiana, as exhibiting no basis for the jurisdiction of this

Court. The ~~defendant~~ plaintiff in error, in his brief on the motion, to dismiss, assails the decision as well as the legislation of Louisiana. The decision of the highest Court of Louisiana, is qualified in terms, not usually employed in reference to judicial tribunals. The legislation of the State is attacked as a wanton violation of right; the decisions spoken of as sanctioning the wrong. The decision is further characterized as "perfunctory" and "unreasoning"; the Court, it is said, received "hospitably" the defences to the relator's demand. The complaints denoted by such modes of expression, will receive such attention as in this form of discussion they seem to demand, without undertaking to deal with all the issues and details of a voluminous record.

This Court will not assume that the Supreme Court of Louisiana extended to the defences in this case, more hospitality than that consideration, to which, under the Constitution and and laws of the State, the defences were entitled. It is believed, that the comment from the other side, as to the mode in which the defences were entertained by the Supreme Court, will not at all, affect the capacity of the judgment of that tribunal to withstand dispassionate examination.

The Relator demanded the enforcement of the special tax under the act of 1852, (see the prayer of the petition.) The demand imposed on the Court, the function of determining whether under the constitutional requirement of equality and conformity in taxation, throughout the State, a tax for corporate debts assumed in the consolidation act, as the debt of the whole city, could be imposed on real estate alone, to the entire exclusion of personal property: whether the assessment roll of 1851, and not existing values, could consistently with any recognized rule, be made the measure of the amount to be raised by taxation, for years to come, until the bonds of 1852 were paid: and the further enquiry was devolved on the Court, whether any principle or authority permitted the City of New Orleans to tax property on opposite sides of the street, by variant rates of taxation, so that as the decision expressed it, for the four years from 1852 to 1855, taxation on one side of the street was 8.09 per cent., and taxation on the other was 10.71 per cent. These were the salient features of this tax of 1852, which the Supreme Court refused to enforce, for reasons and upon authority, competent it is believed to command assent, and set forth in the elaborate opinion, which is characterized by the Relator as "unreasoning" and "perfunctory." The attention of the Court is invited to the picture of this attempted taxation of 1852, as presented in the forcible language of the decision.

The Supreme Court of Louisiana could not bring itself to recognize such a system of taxation as permissible in any government, having a Constitution and laws governing taxation. On one phase of the question, the incompetency of the Legislature to exempt personal property, under the Constitutional provision of uniformity, the Court had the benefit of the views of this court in 2nd Black, p. 510, that such an exemption could not be made. The Court failed to recognize that suits on tax bills, (Relator's Brief 4) usually ripened into final ~~payment~~ judgment, on newspaper citations, and in which there was no contest, as the Relator's brief admits, were to be accepted, as settling a form of taxation repulsive to the plainest principles of right and justice.

The Supreme Court did not regard as conclusive the dictum in 2nd Louisiana Annual, p. 183, that real estate alone might be burdened with taxation consistently with equality and uniformity; a decision made before the Constitutional rule came into existence, and practically under the Constitution of 1812, which did permit the selection of one species of property alone for taxation. See Oakey vs. New Orleans, 2nd vol. Louisiana Reports, p. 5, 7, 13, *et seq.*

The Supreme Court did not hold that municipal taxation in Louisiana, could be by any rule or no rule, as the Legislature or the Council pleased; and that equality and uniformity had no application to corporate taxation, by far, the exercise of that power most liable to abuse, and therefore the more necessary to be placed under constitutional restriction. The Supreme Court of Louisiana placed itself on this phase of the question with the elementary writers on the subject, Burroughs and Cooley, supported by a current of authority, prominent in which array, is the decision of this tribunal affirming the proposition of the Supreme Court of Wisconsin that the constitutional provision requiring the rate of taxation to be uniform, extends to municipal corporations. Gilman vs. Sheboygan, 2d Black., p. 510. The Supreme Court did not strike down for the benefit of the bondholders of 1852, one of the most efficient safeguards usually inserted in State Constitutions, for the protection of the citizen against unjust and unequal taxation.

The Supreme Court dissented most distinctly, from the argument on the other side, that in Louisiana a jurisprudence had grown up in favor of unequal taxation, such as that attempted in the act of 1852. The authorities are examined in the decision, to which the Court is referred. The boasted sanction claimed on the other side, as resulting from judicial decisions in Louisiana, of unequal taxation or taxation freed from Constitutional restriction, disappears under the test of examination. The conclusion reached by the Supreme Court was that if it be conceded that personal property could be exempted from taxation, "a proprosition the Court did not care to discuss, it would not thence follow that taxes levied whether by the State or city, could be at variant rates, on the same species," precisely what the act of 1852 sought to do, "and the Court added' its attention had been called to no decision or dictum sanctioning any such manifest injustice." The conclusion of the Court on this phase of the question, presents a difficulty, in itself sufficient to crush the tax. The reasoning of this "perfunctory" decision on this branch of the controversy, finds conclusive support in the decision of this Court in Pine Grove vs. Talcott (cited in defendant's original brief) 19 Wallace, p. 675, expressing the significance of uniformity.

"The object of this provision was to present unjust discriminations. It prevents property from being classified and taxed as classed by different rules. All kinds of property must be taxed uniformly, or be entirely exempt. The uniformity must be co-extensive with the territory to which the tax applies. *If a State tax, it must be uniform all over the State*

If a country or city tax, it must be uniform throughout such country or city," and in another decision equal support is found of the Supreme Court of Louisiana, also cited in the original brief, maintaining that "the principle is settled that the Legislature may, without the infringement, of constitutional rights extend the boundaries of a city and embrace new territory, but *it is without the power to authorise the city to levy any other* than an equal tax upon all real and personal property of the city," is the syllabus of the decisions of the Supreme Court of Louisiana. City vs. Cazelar, 27th Louisiana Ann., p. 156. See also Layton vs. New Orleans, 12th Annual, p. , cited in the decision in this case. The case from 27th Annual, 12th Annual, and the searching analysis of earlier decisions made by the Supreme Court in the decision brought here, answers the attempt to prop the tax of 1852, with judicial sanction. The decision in this case exhibits, that neither as an original proposition, dependent on its own terms, or in the light of adjudication, can the tax be supported. The Court, in its review of the history of the tax and of the decision claimed to support it, alludes to the Act of the Legislature of 1856, four years after the act of 1852, under which the unequal taxation of 1852, was forbidden. The legislative department at that early date revolted against the tax.

The Relator further demanded that the City be enjoined from levying any taxes on the real estate of the City subject to this special taxation to the prejudice of the consolidated loan debt, and that the amounts derived from taxation be applied exclusively to the obligations of 1852, held by the Relator and others like him. (See prayer of petition.) This was in effect, asserting a prior if not an exclusive right to the taxation of the city. All its creditors were to stand aside, and forego payment until this favored bondholder of 1852 was paid. The city of New Orleans, with its twenty millions of bonded debt, was to place its resources of taxation entirely at the disposal of one class of its creditors, the bondholders of 1852. All the bonds of New Orleans had been issued under legislative acts, as stated in the act of 1876, p. 54, printed in appendix. Pretensions so utterly devoid of merit failed.

The Supreme Court of Louisiana maintained the validity of the bonds. (See decision.) The relator demanded the special tax of 1852, with the large measure of extraordinary relief, the supposed accompaniment of the tax. It was that tax, the validity of which the relator endeavored to maintain. That demand was refused. On that issue he failed, because of the pressure of constitutional defences delineated in the decision If the tax claimed was unconstitutional, as the Court observed, its levy was impossible The judiciary could not create a tax or vivify the act of 1852, with that life, the organic law of the land had not imparted.

The act of 1876, is attacked by the relator as a wanton violation of constitutional right, and severely criticised it as a lottery. When that act was passed the bonded debt of New Orleans, was $20,000,000. The resources of the people had been greatly impaired by causes, detailed in the preamble to the act. Taxes could not be collected, and the city was involved in great financial distress. It was found impossible, to discharge the obligations to the public creditors. The relator's petition itself depicts the oppressive taxation. The Legislature of Louisiana, in 1876, had to deal with this condition. The act was extended to all. The relator demanded that the public taxes should be applied to the exclusive benefit of consolidated coupons, and that no taxes should be levied upon the real estate of the city to the prejudice of the consolidated debt. Had this view been adopted, the demand in this case would perhaps have been appeased, but the holders of more than fifteen millions of dollars of other municipal bonds issued by the corporation from time to time from 1852 to 1876 under the authority of legislative acts, might have impugned the public faith at the bar ofthis Court, if not with the vigor of the relator, certainly with justice. The Legislature of 1876, in the premium bond act of 1876, directed that annually there should be levied taxes to pay the bonded debt, that each year a fixed portion of the debt should be paid, with premiums added, the series of bonds paid and premiums to be determined by lot; the taxation was to increase annually, so that at the end of fifty years the entire debt would be paid. What concern has the relator with a scheme of finance, that holders of other municipal bonds choose to accept? One of the sections of the act of 1876 prohibits the issue of writs mandamus to compel the levy of any taxes, other than the premium bond tax. This provision, it may be conceded, would not bind creditors who, antecedent to the act, were entitled to a tax, and rejected the act. If this section is stricken out, the act stands a settlement by the city with those of the creditors who have accepted it. If the complainant is without the shadow of basis for his pretensions, as adjudged by the Supreme Court, he cannot arraign the section of the act which forbade the writ of mandamus as violating his right. As to one who urged the levy of a tax forbidden by the Constitution, the section was valid.

The animadversion of the other side, so far as directed against the Court, that the case "shows wanton violation of law, by the City of New Orleans in seeking the adoption of the act of 1876 and the sanction of that act by the Supreme Court," is sufficiently answered by the remarks of Mr. Justice Marr on this act, near the close of the opinion. The "Court did not find "it necessary to *pass upon this act, because the views which we have* "*already expressed suffice to dispose of this case; and we prefer* "*to reserve any expression of opinion as to the validity* "*of the act, in whole or in part, until the question shall* "*be presented to us in such shape and between such parties as will* "*give us jurisdiction. Without reference to this act, the relator* "*is not entitled to the relief which he seeks; and that is the only* "*matter to be determined on this appeal.*"

The wanton violation of law, attributed to the Supreme Court is in sanctioning a legislative act, with reference to which, the Court pretermits any opinion whatever, the whole case of the relator having been disposed of on other grounds. The views of the Court on another act of 1870, are stated in the decision and alluded to in the original brief of defendant on this motion.

This Court has no commission to redress grievances of every nature, which suitors in the State Courts may conceive they have suffered. The controlling decision against the relator is that he has no contract to enforce the conclusion is reached on a ground over which this Court has no review, and on that ground alone, the adjudication against the relator is exhaustive and complete. The relator conceives that decision is wrong, and labors to demonstrate the error. But that error, if it could be deemed to exist, would not give jurisdiction. The language of this Court in one of the cases cited in defendant's original brief, is quite pertinent, in conclusion. "We are not authorized by the judiciary act to review judgments of State Courts because the judgments refuse to give effect to valid contracts, or because in their effect they impair contracts. If we did, every case decided in a State Court could be brought here, when the party setting up a contract alleged that the Court had taken a different view of the obligation to that which he held. As this Court said in 4th Wall., 181, it must *be the Constitution or the statutes of the States which impair the obligation*, or the case does *not come within our jurisdiction*." Again, in referring to another case in which the jurisdiction was sustained, this Court observes that "it was the statute which worked the injury, and it was the judgment of the State Court holding the statute valid which gave this Court jurisdiction."

The relator drew in question in his petition the statutes of 1874 and of 1876. These were the impediments he conceived stood in his way. But the decision makes no allusion to the one, and passes by the other. There remains the controlling adjudication of no contract, placed on the Constitutional ground. Apply the tests of the 709th section of the Revised Statutes, so plainly illustrated in the cases cited, and especially in 12th Wallace, and the asserted jurisdiction so confidently claimed, disappears with the perusal of the decision.

Respectfully submitted,

B. F. JONAS,
HENRY C. MILLER.
Of Counsel for the City

OFFICE SUPREME COURT U.S.
FILED
OCT 11 1880
JAMES H. McKENNEY, Clerk.

U. S. SUPREME COURT.

No. 165.

THE STATE OF LOUISIANA,
EX-RELATIONE THE SOUTHERN BANK,
vs.
THE CITY OF NEW ORLEANS.

BRIEF ON MOTION TO DISMISS.

With an Appendix containing the Articles of the State Constitution, the Statutes of the State, referred to in this Brief, and containing also the opinion and decree of the Supreme Court of Louisiana, sought to be reviewed here, together with the concurring and dissenting opinions.

B. F. JONAS,
HENRY C. MILLER,
Of Counsel for the City of New Orleans.

L. Graham & Son, Stationers and Printers, 127 Gravier st.

U. S. SUPREME COURT.

No. 165.

THE STATE OF LOUISIANA,
EX-RELATIONE THE SOUTHERN BANK,
vs.
THE CITY OF NEW ORLEANS.

BRIEF ON MOTION TO DISMISS.

STATEMENT OF THE CASE.

The Southern Bank, a banking corporation domiciled in New Orleans, applied for a writ of mandamus, to the 3rd District Court of the parish of Orleans, to compel the authorities of the city, to levy a special tax to pay the interest upon certain bonds issued by the city, under the act of the Legislature of the State, approved 23 February, 1852. Acts 1852, p. 53, §. 37. (See appendix filed with this brief, p. 39.) The decision of the 3rd District Court, in favor of the tax, was carried by appeal to the Supreme Court of the State, and the decision of that Court was against the tax, reversing the decision of the lower court. Record p.   . The case is now before this Court on the writ of error, sued out by the Southern Bank, to reverse the decision of the highest court of the State.

The petition of the Southern Bank, claiming the tax substantially averred: the ownership by the relator of certain unpaid coupons of interest of the bonds issued by the City of

New Orleans under the act of 1852; that the tax to pay the bonds and interest constituted a contract between the city and the bondholders, which no legislation could impair; that the city authorities had thrown impediments in the way of the bondholders to prevent payment of the obligations; that the Legislature of the State had enacted act No. 53 of 1874, and act No. 31 of 1876, the first having for its object to dispense the city from fulfilling its obligations under said act, in respect to levying a tax to provide a sinking fund for the bonds, and the last of which is charged to have been passed to prohibit the city from levying any tax for the bonds, or any tax whatever except the tax authorized by that act: the petition further alleges that these statutes of the State of 1874 and 1876, violate the vested right of petitioner under his contract, and are repugnant to the article 1st, section 10 of the Constitution of the United States prohibiting any legislation by the State impairing the obligation of that contract. See Record p.

" The prayer of the petition was, that writs of *mandamus* " and *injunction* issue herein, commanding E. Pilsbury, the " Mayor of the City of New Orleans; J. C. Denis, Administra- " tor of Finance; J. G. Brown, Administrator of Accounts, John " McCaffrey, Administrator of Improvements; J. D. Edwards, " Administrator of Water Works; Charles Cavanac, Adminis- " trator of Commerce; R. E. Diamond, Administrator of Police; " J. E. Rengstorff, Administrator of Assesssments, the last " seven being members of and composing the *Council* of said " City of New Orleans, at once to levy, by separate and dis- " tinct assessments, and hereafter collect and apply, under the " provisions of Section 37, of Act No. 71, approved 23rd Feb- " ruary, 1852, a special tax of six hundred and fifty thousand " dollars ($650,000) for each of said years 1874, 1875, 1876, " 1877, less coupons paid for 1874 and 1875, to meet the coupons " overdue and unpaid, and to purchase bonds, issued under said " section, by the city, as well as a like tax for the year 1878, " for the purpose of paying the coupons maturing that year " and purchasing bonds, as contemplated by said section 37; " and forbiding and enjoying said Mayor and Administrators " from levying any tax, on the real estate within the limits of "said city, which is subject to special taxation, in favor of the "Consolidated Loan Debt, under said section 37, to the injury "and prejudice of said Consolidated Debt, and that, after due "hearing, said *mandamus* and *injunction* be *so made, peremptory* "and *perpetual*, and that the amounts so raised be exclusively "applied to coupons and bonds held by relator and others "likewise situated; that all other obligations issued be annulled, if found to have been issued without authority, etc."

The answer of the City of New Orleans, substantially avers that the tax attempted to be created by the act of 1852, under which the relator claims his tax, was and is unconstitutional, null and void, because of plain repugnancy to the 127th article of the constitution of the State of 1845, under which the act of 1852 was passed, as it also was violative of the similar articles contained in the subsequent constitutions of the State, to wit: of 1852 and of 1868, which articles required taxation to be equal and uniform; to be taxed in proportion to its value, to be ascertained as directed by law, and which prohibited the taxing of one species higher than another, on which taxes shall be levied. See constitution of 1845, art. 127; Const. 1852, art. 123; Const. 1868, art. 118, appendix, p. 39. With this defence to the unconstitutionality of the tax, the answer maintains the validity of the subsequent legislation impugned by the relator as violative of his contract, the special tax being void for repugnancy to the organic law. The answer sets up other defences, one being that the Legislature had taken away the writ of mandamus, as a remedy against the city. The other defences are stated in the decision of the Court. But if the decision brought here for review, presents the adjudication of the Supreme Court of Louisiana adverse to the tax claimed, because by reason of its repugnancy to the State Constitution, the right to the tax never existed, the other defences pleaded, can have no influence on the question of jurisdiction raised here. The writ of error to a State Court, brings up for review the adjudication upon a statute of the State, when it has been impugned as violative of the Federal Constitution; when the decision is in favor of its validity, and when without that decision the

The tax was to be laid on real estate and slaves. This exception, in itself, would have rendered the tax unconstitutional, according to the construction of the equality and uniformity clause, placed by this Court, on that provision in the Constitution of Wisconsin.

See Gilman vs. Sheyboygan, 2 Black, p. 510.

The Supreme Court of Louisiana cite the authority of this Court, on this branch of this case. With respect to the argument that in Louisiana, it was competent to select classes of property to bear the whole burden of taxation, the Supreme Court observes "it did not care to discuss the proposition," (appendix, p. 19.) Another phase of the constitutional objection to the tax, was enough in the judgment of that tribunal, to stamp the tax with invalidity.

The act of 1852 was hostile in another respect, to the constitutional requisite of uniformity and equality. It proposed to tax the same kinds of property, *i. e.* real estate and slaves, at a different rate per cent. in each of the districts, and within the City of Lafayette, constituted one city by the act.

The old city debt, *i. e.* contracted from 1805 to 1836, was according to the act, to be divided between the districts and the City of Lafayette, on an arbitrary rule of division, with the municipal debt of each added: and that debt thus ascertained was to determine the rate of taxation to be imposed in *each* of the districts, and in the City of Lafayette, comprising the new city. The rule of division of the old city debt, was not to be the participation of the old districts in creating it, but it was to be apportioned on the basis of the value of real estate in each in the year 1851. The singular rule of apportionment, of the debt, produced the variance in the rate of taxation, for the rate per cent. of the tax in each district and in the City of Lafayette, was to be in proportion tothe debt. See acts, 1852, p. 53, p. 37, p. 55, pp. 56, 65, appendix, pp. 39, 41.

The system of different rates of taxation, which the act proposed to apply to property of equal value, within the limits of the same city, and within the jurisdiction of the same taxing power, was incongruous. It was oppressive to the citizen. It was repugnant to the Constitution. The resident on one side of a street, was required to pay a tax higher than his neighbor just opposite, paid on his lot of the same or even greater value. Throughout the city, was sought to be established, under this act of 1852, the strange system of property, taxed at a rate per cent., differing in each district of the city.

It could not be maintained that municipal taxation, the form of exercise of that power most liable to abuse, was subject to no restraint; that the Legislature, with respect to impositions on the property of the citizen, for municipal purposes, could do what it pleased. The Supreme Court of Louisiana, held that municipal taxation in Louisiana, was not freed from constitutional restriction, and that this act of 1852, offended against the organic law, of uniformity and equality in taxation. The debts, for the payment of which this tax was to be levied, it is true, had been contracted by the municipalities and by the City of Lafayette, when they existed as separate governments. But the debts had become by the express assumption in the consolidated act, *the* debt of the new consolidated city, and all the property of the old corporations was transferred to the new city. The enlargement of territorial boundaries, so as to take in adjacent municipal subdivisions or towns, is not infrequent, in the growth of cities. But the taxing power, to pay corporate debts, is not to be by a rule different from that, the constitution prescribes, because of the enlargement of the corporate boundaries, and the consequent assumption by the new municipal government, of the debts of the blended corporations. So, when, in 1852, these old municipalities and the City of Lafayette became merged, the power of taxation to be exerted by the consolidated city, whether to pay debts new or old, or of whatever origin, became subject to the constitutional rule of equality and uniformity, in taxation. As this Court expressed it, construing the significance of uniformity, used in the constitution of Wisconsin, as it is in that of Louisiana and that of almost all the States,"—the uniformity must be co-extensive with the territory to which the tax applies. If a State tax it must be imposed all over the State. If a county "or city tax, it must be uniform throughout the city or county." Pine Grove Township vs. Talcott, 19th Wallace, p. 675. The Supreme Court of Louisiana announces the same rule of uniformity, and still more to the point, that the rule has no exception, because the corporation boundaries have been extended, the case in 1852, when the tax claimed here was attempted to be created. "The principle is settled that the Legislature may, without the infringement of constitutional rights extend the boundaries of a city, and embrace new territory, but *it is without the power to authorize the city to levy any other* than an equal tax upon all real and personal property of the city," is the syllabus of the decision of the Supreme Court of Louisiana. City vs. Cazelar, 27th Louisiana Ann., p. 156.

What the elementary principle of taxation, announced in the Constitution of Louisiana, and maintained with so much force, in the decisions cited, so plainly forbade, is precisely what this act of 1852 sought to do, *i. e.*, to levy a tax upon the property of the city *not equal and uniform*, but a tax adjusted by location, so that two houses of the same value, but on opposite sides of a street, were to be taxed differently. This is the form of taxation, which the Supreme Court of Louisiana held to be utterly unconstitutional, in that decision brought here by the writ of error.

The proposed tax exhibited another feature, equally repulsive. It was in adopting the assessment roll of 1851, as a measure of taxation for future years. That value was to measure the share of each of the districts for the old city debt, and the tax in each was to be in proportion to the debt—" the rate per cent. of tax in each district was to be in proportion to the debt of each, thus ascertained, *i. e.* by the roll of 1851. The existing capacity of the property to bear the burden, not its past value, is the rule in adjusting taxation; but the act of 1852 sought to maintain the standard of the changed or obliterated values of 1851

In thirty years, that have passed since 1851, waste places then, have became the thoroughfares of a great city, adorned with valuable and magnificent stores. Under the act of 1852, this added value was to be rejected, and the tax was to be in proportion to an amount of debt, adjusted on the basis of the inferior values of 1851. In another of the districts, its real estate valuation of 1851, has dwindled by reason of the commercial development of the other districts; yet under the apportionment of the debt and taxation under this act of 1852, the burden was to be adjusted not on present reduced values, but on the basis of the extinct values, on long years since.

The decision of the Supreme Court of the State with reference to the tax, first refers to the legislation antecedent to 1852, with respect to this old debt, and noticing the rule of apportionment introduced by the act of 1852, proceeds to deal with the constitutional questions. (Appendix, pp. 14, 15, 16, 17 et seq.

"Having thus fixed the quota of each municipality, by an invariable and arbitrary standard, and established the portion "of the aggregated debt to be paid by each, by adding to this "quota the debt created by each, section 37 required the inhabitants of each municipality to pay their respective portions of the consolidated debt by an annual tax on the real "estate and slaves owned by them, without respect to their "value, the percentage in each municipality, being in proportion to the amount of indebtedness of each.

"We have no means of ascertaining the relative values of real "estate and slaves, or of other taxable property, in the several "municipalities, in 1851, nor subsequently. In the nature of "things the taxes imposed by the act of 1852, could not have "been equal and uniform. During the forty years of the running "of the consolidated bonds, many of the slaves would die, "and any and all of them might have been removed beyond

" the limits of the city at any time, so that they would not
" have been within the reach of city taxation, and great
" changes would necessarily take place in the actual and rela-
" tive values of real estate in different parts of the city, while
" the portion of the debt to be paid by the inhabitants of each
" subdivision was irrevocably fixed. The assessment rolls
" from 1870 to 1877, inclusive, were offered in evidence; and
" they show how unequally and oppressively the tax as fixed
" by section 37, would operate now. The real estate in the
" First District, in 1870, was valued at $50,986,135; personal
" property at $16,148,140; in 1877, real estate, $36,611,165;
" personal property at $17,187,620. In the Second District, in
" 1870, real estate, $29,870,975; personal property, $5,118,102;
" in 1877, real estate, $21,578,925; personal property at
" $2,792,295. In the Third District, in 1870, real estate,
" $10,693,723; personal property, $809,005, in 1877, real es-
" tate, $9,497,765; personal property, $639,282. In the Fourth
" District, in 1870, real estate, $14,683,995; personal property,
" $909,416; in 1877, real estate, $12,374,530; personal property,
" $800,828.

" The practical operation of this mode of taxation shows
" how great the disparity was during the four years, from 1852
" to 1855, inclusive, after which it was abandoned. The ag-
" gregate of the percentage levied on real estate and slaves for
" these four years, for all purposes, was: In the First Dis-
" trict, 858⅓; in the Second, 809⅓; in the Third, 107⅓; and in
" the Fourth, 765⅓; while all other taxable property in the
" city paid only 295, for all purposes, in these four years."

The Court announces its conclusion that the tax is unconstitutional, in the following emphatic language, appendix, p. 15.

" The constitution of 1845, art. 127, which corresponds with
" art. 123 of the constitution of 1852, and art. 118 of the exist-
" ing constitution, is as follows:

" Taxation shall be equal and uniform throughout the State.
" After the year 1848 all property on which taxes may be
" levied in this State, shall be taxed in proportion to its value,
" to be ascertained as directed by law. No one species of

" property shall be taxed higher than another species of prop-
" erty of equal value, on which taxes shall be levied."

" It would be a waste of words, to attempt to show the manifest inequality and want of uniformity in the tax imposed by section 37 of the act of 1852. It was flagrantly in conflict with the constitution of 1845."

The Court examining the position that municipal taxation is not controlled by the State constitution and refuting the argument that previous decisions in Louisiana had so held proceeds: " Counsel for relator urge that art. 127 of the constitution of 1845 was applicable only to taxation by the State, and not to municipal taxation: and they rely on Second Municipality vs. Duncan, 2 An. 183: Cummings vs. Lafayette, 3 An. 674: and Buffington vs. Dinkgrave, 4 An. 548: and the Court after examining the authorities cited, announces its conclusion—Appendix, p. 17:

" We cannot assent to the proposition that article 127 of the constitution of 1845, and article 123 of the constitution of 1852, were not applicable to municipal taxation. The decision in Duncan's case was rendered on the 15th February, 1847. The Legislature was then in session; and it hastened to place the taxpayers of New Orleans under the ægis of this constitutional provision. By act approved May 4, 1847, No. 192, page 147, it was declared that " taxation within each municipality shall be equal and uniform. After the year 1847, property on which taxes may be levied in each municipality shall be taxed in proportion to its value. No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied."

" We can not regard the words " throughout the State," as used in the first *alinéa* of article 127, as limiting the operation of the great principle which it declares. On the contrary, they convey to our minds the idea tha in no part of the State of Louisiana can taxes not equal and uniform be lawfully

" levied, whether by the State government or by the municipal
" governments on which the Legislature has chosen to confer
" taxing power. The principle of equality and uniformity in
" taxation is inherent in it, it underlies every system of government
" not despotic, and it acquires no additional force by the
" formulated expression in the organic law, which is simply
" declaratory."

" Further reviewing the variant rates of taxation provided
" for by the act of 1852, the Court proceeds—Appendix p. 19:

" If it be conceded, and we do not care to discuss that proposition
" now, that under the constitution of 1845, after the year
" 1848, the Legislature or a municipal corporation could select
" one species of property, and impose a tax upon that species
" of property alone, excluding any other species of property
" made taxable by law, it would not thence follow that the tax
" could be so levied on that species of property, whether by
" the State or by a municipal corporation that the rate on
" valuation could be higher in one part of the State, or in one
" part of the city, if taxed by a municipal corporation, than in
" any and every other part of the State or corporation. Our attention
" has not been called to any decision or dictum sanctioning
" any such manifest injustice. But this is precisely what
" the Legislature did, by section 37 of the act or 1852. The
" boundary between the Second and Third Districts is Esplanade
" street. The owner of real estate and slaves on the up
" town side of Esplanade paid per centages, for the four years
" ending in 1855, aggregating 809⅓, while his neighbor on the
" opposite side of that street, paid in the same period, 1071⅓.
" Canal street separates the First and Second Districts. The
" proprietor on the upper side of Canal street paid 858⅓, while
" the owner of property on the lower side paid 809⅓. Felicity
" street is the dividing line between the First and Fourth Districts,
" and while the property on the lower side of that street
" paid 858⅓, that on the upper side paid 765⅓.

" Such injustice was too glaring to escape the notice of the
" Legislature; and the Acts of 1856 (printed in the Appendix,

" pp. 41, 42), put an end to it by subjecting all taxable property " in the city of New Orleans to the same rate per cent. upon the " same basis, valuation.

" And the Court reiterates its conclusion against the tax.

" We think that section 37, of the act of 1852, in so far as it " authorized the special tax on real estate and slaves, was violative of article 127 of the constitution of 1845, then in force. " That it was repealed to that extent by the act of 1856; that " the act of 1856, in that respect, are in strict accordance with " article 127 of the constitution of 1845, and the corresponding " article, 123, of the constitution of 1852; and that they in no " manner impair the obligation of any contract with the bondholders, or any other person whomsoever. The levy of the " special tax on real estate, as prayed for by relator, is legally " impossible. (See opinions Appendix, pp. 1 to 28, the whole " of which is referred to.)

ARGUMENT.

This court has no jurisdiction on a writ of error to a State court, to reverse a decision, which decides that under the State Constitution, the right to the tax claimed by the relator, did not exist. It may be, that in the opinion of this court, the State court erred, in its construction of the organic law of the State. Still, this court has no power to correct the error, if it could be deemed to exist. We are not authorized, observed this court in Knox vs. the Exchange Bank, 12th Wallace, p. 383, to review the judgments of the State courts, because their judgments refuse to give effect to valid contracts, or because these judgments in their effect, impair the obligations of the contracts. If we did, every case decided in a State court could be brought here, when the party setting up a contract, alleged the court had taken a different view of its obligation, to that which he held. It must be the Constitution or statute of the State, which impairs the obligation of the contract, or the case does not come within our jurisdiction. Rail Road Co. vs. Rock, 4 Wallace, p. 180: University vs. People, 99 U. S., p. 320; Revised Statutes United States, § 709.

To give jurisdiction to this court there must be drawn in question the validity of some provision of the constitution or statute of the State, as infringing the Constitution of the United States; the decision must be in favor of its validity and *that* decision must *have been essential to the decision of the case.*—See Commercial Bank vs. Buckingham, 5th Howard, p. 317. Bridge proprietors vs. Hoboken county, 1 Wall, p. 116. Lawler vs. Walker, 14th Howard, p. 152. It must be, to give this court jurisdiction, that the State court has maintained the validity of the statute impugned as impairing the obligation of the contract, and it is necessary that *without* that decision on the validity of the statute, the State court could not have rendered the judgment. Lawler vs. Walker, 14th Howard, p. 352.

The relator in its petition for the writ of *mandamus* assailed the act No. 53 of 1874, "an act to postpone the levy and collection by the City of New Orleans, of a tax for a sinking fund for the purchase of its bonds," etc., and the relator also assailed act No. 31 of 1876, and especially the 7th section thereof, which prohibited the levy of any tax, except that tax authorized by that act. See petition of the relator. Record p. . These acts are charged to have been passed in violation of the provision of the Constitution of the United States, which prohibits legislation impairing the obligation of contracts, and it is further charged that "the various acts of the State and of the city postponing and altering the operation of the acts of 1852," from which the tax is claimed to be derived, are "inadequate and ineffective to relieve the city from the obligation to perform the contract" alleged to result from the act of 1852. But the decision sought to be reviewed, does not rest on the statutes of 1874, or of 1876. The substance of the act of 1874 impugned by the relator, is stated by the Court (appendix, p. 6), and the Court again alludes to that act in summarizing the allegations in defendant's answer (appendix, p. 8), but in other respects, that act is not touched in the decision. With respect to the act of 1876, impugned also by the relator, the decision pretermits any decision; that portion of the decision is:

"If the seventh section of the act No. 31, of 1876, admits of "no other interpretation than that it deprives any class of "creditors of the City of New Orleans of the right to enforce "their demands by judicial process, we think it would be in "excess of legislative power, and void. But if it is suscepti- "ble of the construction that it forbids creditors, bondholders, "and others, to proceed directly by mandamus to compel the "levy and collection of a tax to pay the amounts due them, "and requires all such creditors to proceed under the act No. "5, of 1870, we think it would not be violative of any legal or "constitutional right.

"If the seventh section of the act (impugned by relator) "should be held to be violative of the constitution; it would "not thence follow that the entire act is unconstitutional. *We "do not find it necessary to pass upon this act, because the views "which we have already expressed suffice to dispose of this case; and "we prefer to reserve any expression of opinion as to the validity of "the act, in whole or in part, until the question shall be presented "to us in such shape and between such parties as will give us jur- "isdiction. Without reference to this act, the relator is not enti- "tled to the relief which he seeks; and that is the only matter to "be determined on this appeal."*

This act of 1876, was one of the defences of the city. But the defence based upon it, was overshadowed by the defence of the unconstitutionality of the tax. If the tax was violative of the constitution, it did not require the act of 1876 to prohibit its levy or to deny the writ of mandamus to enforce the illegal tax. The Court in the first portion of its reasoning, affirms the validity of the act in so far as it deals with the remedy of mandamus. But obviously impressed with the unimportant nature of the issue, on the statute of 1876, the Court observes:

"*We do not find it necessary to pass upon this act, because the "views which we have already expressed suffice to dispose of this "case; and we prefer to reserve any expression of opinion as to "the validity of the act, in whole or in part, until the question "shall be presented to us in such shape and between such parties "as will give us jurisdiction. Without reference to this act, the "relator is not entitled to the relief which he seeks; and that is the "only matter to be determined on this appeal."*

It cannot then be contended, in respect to the statutes of 1874 and of 1876, impugned by the relator as violative of his alleged contract, that the decision brought here for review was based on those statutes.

The city in its answer plead another statute, the act No. 5, of 1870, which prohibited the writ of mandamus, to suitors against the city. The Court citing Tennessee vs. Sneed, 6 Otto, p. 73, held the view that the statute was competent legislation as pertaining to the remedy on contracts.

The language of the Court on this point was—

"Laws relating to the forms of judicial proceedings are "remedial; and the form, in any case, must depend on the law "in force at the time the proceeding is instituted without regard "to the law at the time, the facts on which it is based occurred. "If before the final decision a new law should intervene and "change the form, the form originally resorted to, can no longer "be pursued, unless the new law expressly declares that the "pre-existing form shall be followed in the cases then pending. "No individual can claim a vested right in the remedial process "by which his demand might have been enforced, at the time "it accrued, when the Legislature has chosen, subsequently, to "abolish that process. See Ludeling vs. His Creditors, 4 Martin N. S. 603; Scott vs. Duke, 3 An. 253, and authorities there "cited. What the suitor has a right to claim, is the use of such "remedy as may be adequate to his demand, not that he shall "be permitted to enforce that demand in any special form, or "by any specific process. These views are fully sustained by "the decision of the Supreme Court of the United States in "Tennessee vs. Sneed, 6 Otto, and by many decisions of that "court, and of the State courts cited at pages 73, 74. The "proceeding in Tennessee vs. Sneed by mandamus was brought "after that form of proceeding, in such cases, had been prohibited by the State Legislature. The Supreme Court of "Tennessee refused the writ, and the Supreme Court of "United States on a writ of error, affirmed that judgment."

Again the court says: "We think this act pertains to the remedy, that it is within the constitutional power of the Legislature," and the court continues the same course of reasoning referring to previous decisions of the Supreme Court of the State (appendix, pp. 24, 25 et seq).

But it is obvious, that the view of the Court, on this act of 1870, as an act dealing with the remedy, and not infringing the obligation, is not at all essential to that other conclusion reached by the Court, that the tax was void, because prohibited by the organic law. The view of the Court on this question of the effect of the act of 1870, is not subsidiary to the controlling issue raised and decided, as to the validity of the tax itself.

In the concurring opinion of Mr. Justice DeBlanc (appendix p. 28), the constitutional objections to the tax are elaborately examined, and he reaches the conclusion that the tax was manifestly contrary to the organic law of the State. His Honor, the Chief Justice of the State, dissented. He presented the constitutional view of taxation opposite to that maintained in the opinion of the Court. The members of the Court, five in number, stood four of its members against the tax to one for it.

The Court reached another conclusion. The relator claimed that the 37th section of the act of 1852, created a contract in respect to the tax, and also in respect to the prohibitions the section contained; these prohibitions in substance were, that from and after the passage of the act no obligation or evidence of debt of any description, except the bonds authorized by the act of 1852, should ever be issued by the City of New Orleans, or under its authority, unless authorized by a popular vote; that no debt should ever be created by the Council except for some single work or object, for which the means of payment were provided by an ordinance, not to be repealed until the debt was paid; and the further prohibition that all ordinances, resolutions or acts, or acts passed by the Council, shall be null and void, unless the ordinance imposing the Consolidated Loan Tax of 1852, was first passed in each year. See Relator's petition, Record p. —, section 37, appendix, p. 39. The relator claimed that the prohibitions contained in the 37th section, had not been fulfilled: that the city had issued, other bonds without the popular vote by which the real estate subject to the tax of 1852, had been charged with taxes for bonds illegally issued, by reason of all of which, and from other causes connected with the alleged disregard of the prohibitions of the act of 1852, the relator claimed that the asserted contract, under the act of 1852 had been violated, and judgment was asked, that all other obligations of the city be annulled if found to have been issued without authority, etc. See petition of relator. Record p.

On this part of the case, the Court held, that the prohibitions in the act of 1852, did not enter into the alleged contract; that the legislative prohibition in the act of 1852 against the issue of other bonds by the city, it was perfectly competent for subsequent legislatures to remove, and to authorize the issue of such other bonds, the Supreme Court on this portion of the case citing the views of this Court in the Board of Liquidation vs. McComb, 2 Otto, p. 535, with respect to the inability of one legislature to bind future legislatures, not to create further debts. See decision, appendix, pp. 20, 21, 22, 23. But what is there in this portion of the opinion, but the construction by the Supreme Court of the State of Louisiana of the asserted contract of the relator, and the exclusion from that alleged contract of certain legislative prohibitions claimed to havebeen contained in it. This Court cannot review the construction of a contract, (12 Wallace, p. 383,) and if, as the State Court decide, the special tax claimed to be guarded with restrictions so extraordinary, was utterly void by reason of unconstitutionality, so flagrant in the view of the Supreme Court, as to make the demonstration of its manifest want of uniformity and inequality "a waste of words" of what import are these guarantees claimed to have secured a tax, adjudged to have been void from the moment of its attempted creation. The views of the Supreme Court of the State, on the competency of the Legislature of 1852, to limit the creation of debts by future legislatures, right or wrong, are secondary to the controlling decision, which this Court cannot examine, that the tax claimed by the relator never existed. That controlling decision renders unimportant in the jurisdictional point of view, the views of the Supreme Court, on the other aspects of the case. The decision against the supposed guarantees of the tax, is of no effect on the question of jurisdiction, in view of that other exhaustive adjudication, that the tax for which the guarantees are claimed, itself has no existence.

Irrespective then, of any issue or adjudication by the State Court, with respect to the validity of any local statute, impugned by the relator, as violative of his supposed contract, the relator's whole case has been disposed of by the decision, that his asserted tax, was palpably repugnant to the organic law of Louisiana. This decision, is not reached by or through the statutory enactments since 1852. The act of 1856, cited by the Court, in its opinion was declaratory of the obnoxious features of the tax. But the decision against the tax, rests on the force of the Constitution itself, and is supported by the judicial application of its plain mandate, that taxation must be equal and uniform. How can this court review that decision? Can that power of review be exercised, because superadded, to the decision, that the tax has no existence, the State court expressed views with respect to the competency of the Legislature, to deal at all times with the remedy of mandamus, and to grant or withold that remedy, as the legislative discretion pleased? Or, is this Court to take jurisdiction of a decision as to the effect of certain provisions of the Constitution of Louisiana, respecting taxation, because the Supreme Court, besides its adjudication against the tax by reason of its repugnancy to the organic law of Louisiana, has reached another conclusion, with respect to the limitations competent to be imposed by one Legislature, on another, a conclusion, which right or wrong, would leave unaffected the decree against the tax on the totally independent constitutional ground presenting no federal questions? It would be idle for this court to review the decisions in other and minor respects, in view of the decision reached by the Supreme Court of Louisiana, which this court cannot review, that the contract does not exist. No other error in the decision can be assigned, except the error in ruling the federal question.

" To give us jurisdiction under the 709th section, of the Revised Statutes, observes this court, it is not only necessary that some of the questions mentioned in the section should exist in the Record, but that the decision was controlling in the disposition of the cause." Citizens Bank vs. Board of Liquidation, 98 U. S., 140. The controlling decision, now brought here for review, and *the* decision of the cause was: that the tax was utterly unconstitutional. The decision on this ground, was wholly disconnected with the views expressed by Mr. Justice Marr, in reference to the Act of 1870, or upon other topics.

"We have often decided that it was not enough to give us jurisdiction over the judgments of the State courts, for the Record to show that a federal question was argued or presented for decision. It must appear its decision was *necessary* for the determination of the cause, and that it actually was decided, or that the judgment could not have been given without deciding it." Brown vs. Atwell, 92 U. S., 327. Said his honor, the Chief Justice, in Moore vs. Mississippi, 21 Wallace, p. 638: "We are not required to re-examine the judgment of a State Court, simply because a *federal question may have been decided.* To give us jurisdiction it must appear such a question was *necessarily involved in the decision.*" And further along "it was a matter of no consequence," that the State Court after sustaining a demurrer for which there was ample authority on one ground, "may have gone further *and decided a federal question—such decision was not necessarily involved in the decision of the cause.*" If the views expressed by Mr. Justice Marr on the act of 1870, after the cause had been decided against the tax on the constitutional ground, which rendered all other issues unimportant, can be said to decide a federal question, the conclusive answer to the attempt to extract a federal question from this part of opinion, is furnished in the decision of this Court last cited. "It is of no consequence" that the Court after sustaining the defence of unconstitutionality, has gone further and decided a federal question. The decision was not necessarily involved in the determination of the cause. The cause had already been determined, irrespective of the act of 1870.

In this case, strike from the decision of the Court, all that is said with respect to the validity of the statutes, subsequent to the act of 1852, and the decision is complete against the relator. Even had the State court, decided against the validity of the subsequent legislation, it would not have aided the relator. The impediment to his asserted tax, was not in the subsequent legislation, which if his tax had been valid, could have been removed by the Courts. But it was from the organic law of the State, under which the tax offended, that came the blow under which the tax perished. Vain, in this Court, to hold up that subsequent legislation, as a basis for a federal question. The relator has a difficulty beyond the supposed federal question, and completely beyond any relief this tribunal can afford. The decree of the Court finding ample support, in the construction of the State Constitution, was:

"It is therefore ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed, and that the demand of the relator be rejected and dismissed, with costs in both courts."

The opinions of the Court (separate, concurring and dissenting opinions) are all filed in printed form with this brief, and illustrate, with marked distinctness, that the federal questions supposed to be exhibited in the record, were not necessary factors in the adjudication of the State Court, sought to be reviewed here. The decision rests on a basis which this Court has no power to examine, and must dismiss the writ of error for want of jurisdiction.

Respectfully submitted,

B. F. JONAS,
HENRY C. MILLER,
Of Counsel for the City of New Orleans.

OFFICE SUPREME COURT U.S.
FILED
OCT 11 1880
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE U. S.

No.——.

THE STATE OF LOUISIANA,
EX-RELATIONE THE SOUTHERN BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF NEW ORLEANS.

DEFENDANT IN ERROR.

APPENDIX.

Filed with the brief of defendant in error, on motion to dismiss, embracing the opinion and decree of the Supreme Court of Louisiana, brought here for review, together with the articles of the Constitution and statutes of the State, referred to in the opinion and pleadings.

L. Graham & Son, Stationers and Printers, 127 Gravier st.

SUPREME COURT OF THE U. S.

No.——.

THE STATE OF LOUISIANA,
EX-RELATIONE THE SOUTHERN BANK,
PLAINTIFF IN ERROR
vs.
THE CITY OF NEW ORLEANS.
DEFENDANT IN ERROR.

APPENDIX.

Filed with the brief of defendant in error, on motion to dismiss, embracing the opinion and decree of the Supreme Court of Louisiana, brought here for review, together with the articles of the Constitution and statutes of the State, referred to in the opinion and pleadings.

INDEX.

First—Is the opinion and decree of the Supreme Court of Louisiana, with the concurring and dissenting opinions.

Second—The Articles of the Constitutions bearing on taxation.

Third—The 37th section of the consolidation act of 1852, relied on by relator as creating the tax.

Fourth—The supplementary legislation of same year, adding City of Lafayette, and also having relation to the tax.

Fifth—The Act of 1856, alluded to in the decision of the Supreme Court.

Sixth—The Act of 1870, pleaded in answer, and referred to in the decision of the Supreme Court.

Seventh—The Act of 1874, impugned by relator in its petition.

Eighth—The Act of 1876, also assailed by the relator.

No. 7157.

STATE EX. REL. SOUTHERN BANK

vs.

PILSBURY, MAYOR, ET AL.

APPEAL FROM THE THIRD DISTRICT COURT, PARISH OF ORLEANS. MONROE, J.

Edward Bermudez and *John A. Campbell* for plaintiff and appellee.

B. F. Jonas, City Attorney, and *Henry C. Miller* for defendant and appellant.

John & W. S. Finney, *Kennard*, *Howe & Prentiss*, and *Thomas J. Semmes* for intervenors and appellant.

The opinion of the Court was delivered by

MARR, J. The city of New Orleans was incorporated by act of the Territorial Legislature, approved seventeenth February, 1805, with the powers usually conferred on municipal corporations, including that of raising money for municipal purposes "by tax upon real and personal estate within the city." P. 44.

Under this charter, and such amendments as the Legislature saw fit to make, from time to time, the municipal government was administered until 1836, when, by act approved eighth March, the city was divided into three municipalities, each having a separate government for local purposes, with all the powers, within their respective limits, which had been vested in the undivided city, except that there was one Mayor for the whole city, and a General Council to decide upon matters of general interest. P. 28.

This act required the then existing debt of the city to be paid by the three municipalities, the quota of each to be apportioned on the basis of the amount of taxes and revenue accruing to each: it created a sinking fund for the purpose of paying this debt and interest, section 15; and provided that, in case of reunion, "the debt of each municipality shall be paid by the inhabitants thereof." Sec. 26.

A supplementary act, approved eleventh March, 1836, declared, more specifically, that, if the law establishing the three municipalities should, by any future Legislature, be repealed, or so amended as to unite them into one corporation, "all the debts created by each of the said municipalities shall first be fully paid and satisfied by each municipality separately." Sec. 2, p. 38.

The contingency thus provided for was realized in 1852; the three municipalities were reunited by act approved twenty-third February, p. 42. The Second Municipality became the First District; the First Municipality, the Second District; the Third Municipality, the Third District; and by act approved the same day, p. 55, the city of Lafayette was annexed to, and incorporated with, the city of New Orleans as the Fourth District.

By subsequent legislation all that part of the parish of Orleans situate on the right bank of the Mississippi was annexed as the Fifth District: Jefferson City, as the Sixth: 1870, p. 30; and the city of Carrollton, as the Seventh District of New Orleans, 1874, p. 119. In each case the city of New Orleans became liable for and assumed the debts of the corporations annexed, as it had done with respect to the three municipalities and Lafayette.

During the sixteen years of separation the three municipalities contracted debts far beyond their resources; and they became greatly embarrassed, and finally insolvent. The Legislature, from time to time adopted measures for their relief: 1839, p. 94: 1847, p. 140: 1850, p. 169; and an act was passed in 1850 for the government and administration of the affairs of the city of New Orleans, "in case the three municipalities should be reunited." P. 156. Nothing was accomplished under this act; and, obvious as the necessity was for a reunion, there were serious difficulties in devising a satisfactory plan, and in adjusting and carrying out the requisite details. The "inhabitants" were not able to pay the debts of each municipality, respectively, as required by section 26 of the act of 1836; and the "municipalities" were not able to comply with the condition precedent imposed by section 3, of the supplementary act, which required that all the debts *created* by each municipality should *first* be fully paid and satisfied by each. The debts of the several municipalities were unequal in amount, and not proportionate either to the population or to the respective values of the taxable property in each; and the constitution of 1845 required that taxation should be equal and uniform throughout the State.

The Legislature of 1852 grappled with these difficulties. By the two acts of twenty-third February, No. 71, section 37, No. 72, section 5, the entire indebtedness of the municipalities and of Lafayette, including the quota of the old city debt apportioned to each municipality in accordance with section 15 of the act of eighth March, 1836, and the separate debt subsequently created by each, was consolidated and assumed by the city of New Orleans; and bonds of the city were issued for the aggregate amount, having not more than forty years to run. The old city debt was divided between the three municipalities in proportion to the value of the real estate within the limits of each, as fixed by the State assessment roll of 1851; and this quota, added to the separate debt created by each municipality, constituted the entire debt of each.

To meet the annual interest, and to provide a sinking fund for the purchase and final payment of these bonds, an annual special tax of $650,000 was to be levied on the real estate and slaves in the three municipalities and Lafayette, the rate per cent. in each to be in proportion to the indebtedness of each. The act also required the Common Council, in the month of January, of each year, to pass an ordinance to raise this sum, to be called the consolidated loan tax; and it declared null and void all ordinances, resolutions, or other acts passed by the Council after the first of January, in each year, "unless the ordinance imposing the consolidated loan tax shall have been previously passed." The city of New Orleans was forbidden to issue any obligation or evidence of debt except the consolidated bonds; or to contract any loan, unless the same be authorized by a vote of the majority of the qualified voters of the city; and it was also declared that no ordinance creating a debt or loan should be valid unless for a single object or work, distinctly specified therein, and unless such ordinance should provide ways and means for the punctual payment of the current interest, during the whole time for which such debt or loan should be contracted, and for the full and punctual discharge at maturity, of the capital borrowed or debt incurred; and such ordinance was made irrepealable until the capital borrowed or debt contracted, and the interest, should be fully paid and discharged.

It would be difficult to find municipal obligations better secured than these consolidated bonds apparently were.

They were recognized as valid by the Legislature in numerous acts, 1852 to 1874; and they enjoyed high credit in the markets of Europe and America. Under the free banking law of 1855 they were received by the State as security for the redemption of the circulation of the banks; and trust funds to a large amount were invested in them. The interest was paid punctually; and some five millions of the bonds have been paid, or purchased and retired, leaving some four millions outstanding.

The Legislature, on the twelfth March, 1852, passed an act, No. 175, authorizing parishes and municipal corporations to subscribe to the stock of corporations undertaking works of public improvement, to be paid by a tax on landed estate. This act did not authorize the issue of bonds in payment of the stock, and it provided that the stock should belong to the taxpayers, in proportion to the amount of the tax paid by each.

Stringent as the prohibitions of the consolidated act were, the City Council, in May, 1852, by two ordinances, subject to ratification by the qualified voters, took stock in the New Orleans, Jackson and Great Northern Railroad, to the extent of $2,000,000, and in the New Orleans, Opelousas and Great Western Railroad, to the extent of $1,500,000, payable in the bonds of the city, the interest to be met by a special tax on real estate and slaves. The Legislature, in 1854, by acts 108 and 109, required the Council to repeal these ordinances, no doubt because they were considered to be unlawful assumptions of power; but by the same acts it authorized the subscriptions, bonds, and special tax in accordance with the ordinances requiring the city to collect and pay the railroad tax for 1853; and by act No. 110, of the same year, the city was authorized to take stock in the Pontchartrain Railroad to the extent of $1,500,000, with the view of extension to Mobile, payable in bonds, the interest to be secured by tax on all the taxable property of the city. These three acts required ratification by the qualified voters.

By subsequent acts the city was authorized to issue bonds without the formality of popular ratification; so that the entire bonded and floating debt, which aggregated, on the thirty-first December, 1852, $8,736,238, amounted, on the thirty-first December, 1874, to $24,741,765.

The owners of real estate and slaves found this tax oppressive, and after submitting to it for four years, 1852 to 1855, inclusive, they memorialized the Legislature for relief. In 1856 the Legislature passed three acts for that purpose, Nos. 93, 134, 164. The first of these limited city taxation on movables, or personal property, and real estate and slaves, to one dollar and fifty cents on the hundred, provided that rate on real estate and slaves should suffice to raise the amount required to pay the interest on the city debt, together with the gradual reduction of the capital of the consolidated debt. This act prohibited the levy, by the City Council, of any tax, whether on movables or on real estate and slaves, which should not be equal and uniform within the limits of, or through the several districts of the city. Act No. 134 subjected to city taxation every species of property, real and personal, with certain specified exemptions; and Act No. 164 amended the consolidation act, and enlarged the city charter embodying, substantially, the provisions of acts Nos. 93 and 134. Section 42 of this act required the Common Council to levy, annually, an equal and uniform tax on all property, real and personal; but this taxation was limited to one dollar and fifty cents on the hundred, including the consolidated loan tax and the special railroad tax, provided that rate should be sufficient to pay the interest on the consolidated debt and the railroad bonds issued by the city.

Since the passage of these acts taxation in New Orleans has been at a fixed rate per cent, on all taxable property, according to valuation; but the rate has been changed by the Legislature, as the exigencies of the city required. Out of the sum thus raised the amount required for the consolidated loan tax was set apart annually, and applied to the consolidated debt.

By Act No. 5, extra session, 1870, the Legislature forbade the process of mandamus against any auditing or disbursing officer of the city, to compel the issuing of any warrant for or to enforce the payment of any money claimed to be due by the city. This act required all actions for money claimed of the city to be instituted, in the ordinary form, against the city as a corporation. It prohibited the issuing of any execution or *fieri facias* to enforce any judgment against the city: it provided for the registry of such judgments by the auditing officer; and made them payable, in the order of their registry, either out of money in the treasury or out of the next annual budget.

In 1874, by Act No. 53, the Legislature postponed, until December, 1876, the levy and collection of any tax, by the city of New Orleans, for a sinking fund, for the purchase of its bonds; but it is expressly provided that " this act shall in no wise be construed to hinder, delay, or affect the payment of the interest on the bonds of said city, as the same shall mature; *and provided further*, that the validity of the consolidated bonds of the city of New Orleans is hereby recognized in all its integrity, it being the object of this act to afford temporary relief to the taxpayers of New Orleans, in the embarrassed condition of affairs, and not to detract from or impair the rights of the holders of said bonds or others." P. 92.

In 1876 an act was passed, No. 31, commonly known as the premium bond act, authorizing the city of New Orleans to fund its entire bonded debt. Section seven of this act prohibited the levy of any city tax, either for 1876, or for any year thereafter, for the payment of other bonds, or interest on other than the premium bonds. All laws authorizing the City Council to levy any tax whatsoever for other bonds, or interest on other bonds, were repealed; and the courts of the State were declared incompetent to compel the officers of the city, by mandamus, to levy and collect any interest tax other than that provided for in the act.

The Southern Bank, holder of 613 of the consolidated bonds, formally demanded of the city, in December, 1876, and in December, 1877, compliance with the requirements of the consolidation act. The city having thus been put in default, this suit was brought against the Mayor and Administrators, to compel them, by mandamus, to levy and collect a special tax, by separate and distinct assessment, of $650,000, on the real estate subject to that tax, for each of the years 1874 to 1878, inclusive, less coupons paid in 1874 and 1875: and by injunction to prevent the levy, by the Mayor and Administrators, of any tax on the real estate within the city limits subject to taxation in favor of the consolidated loan debt, under the act of 1852, without first having provided for that debt. The petition states at length and minutely the history of the consolidated debt and bonds, which we have endeavored to condense, and to connect with the legislation by which they may be affected; and it charges that the "city and the taxable real estate within its limits are liable for the payment of the matured coupons, and for the purchase of the bonds, to the extent of $650,000 per annum for the years 1874 to 1878, inclusive, less coupons paid in 1874 and 1875, the amount of which the relator knows not."

The petition also charges that the city is estopped from denying the validity of the bonds and coupons, and the obligation to levy the special tax under the provisions of section 37, of act 71 of 1852, by reason of the judgment of the circuit court of the United States in the case of Rosalie Maenhaut vs. the City of New Orleans, "wherein the city denied liability for the debt and wherein the circuit court declared said section 37 to be a *contract*, binding on the city, the State, and the bondholders, and has ordered and compelled a distribution of taxes realized, and has reserved all the rights of complainants to a mandamus to compel the levy and collection and application of said special tax, at a future time, to its legitimate objects."

The mayor and administrators excepted to the jurisdiction of the court, setting up and relying upon the acts of 1870 and 1876, already referred to.

They also excepted that no ministerial duty is imposed on them to levy or collect the tax sought to be enforced by mandamus; on the contrary, they are forbidden by the act 1876 to levy said tax for 1876, or any year thereafter: and that the act of 1874 suspended the levy of any tax for sinking fund, under act 71, of 1852, until December, 1876; and that a tax was levied and collected to pay the interest on the consolidated bonds until 1876, when it was forbidden by act 31, of that year.

In their answer respondents repeat, substantially, the defenses set up by way of exception. They also plead that section 37, of the act of 1852 is unconstitutional and void, because the objects of that section are not expressed in the title, as required by the constitution of 1845, art. 118, which was in force at the date of the passage of that act.

They plead that the tax provided for in section 37, of the act of 1852, is violative of art. 127, of the constitution of 1845, and art. 123, of the constitution of 1852, because it is to be assessed on real property and slaves alone; and because the rate per cent. of the tax, in each municipality, is to be in proportion to the indebtedness of each; and that all the subsequent acts referred to by relator as recognitions of the bonds and tax specified in section 37, of the act of 1852, are, upon the same grounds, wholly unconstitutional and void.

Weckerling and others, owners of real estate in the First, Fourth, and Sixth Districts, intervened, alleging that their property was not liable to the special tax imposed by the act of 1852; and that that act is violative of articles 118, 127 of the constitution of 1845, and 115, 123 of the constitution of 1852. They joined respondents in opposing relator; and they alleged that an injunction will not lie on a petition in the form adapted to mandamus.

Thomas H. Hunt, the owner of premium bonds of the city, intervened, and set up the defenses plead by respondents. He opposed the injunction prayed for, on the ground that, if granted, it would arrest the mayor and administrators in the performance of their proper legislative and executive functions, overthrow the city government, and result in anarchy.

He set out at some length the constitutional objections to the act of 1852, based upon the alleged defect in the title, and the want of equality and uniformity in the tax; and he specially objected to so much of section 37 of the act as restricts the legislative functions of future Legislatures, and the exercise of such legislative powers as may be conferred, from time to time, by the Legislature, upon the mayor and council, as null and void, being beyond the power of the Legislature of 1852, or any other year.

Montgomery and others, taxpayers, intervened, admitting the validity of the bonds, and joining relator in his prayer for mandamus so far as it relates to the tax for 1878 and future years; but they opposed and protested against it for previous years, on the ground that the imposition of taxes for such an amount would be ruinous, and would lead to bankruptcy.

Finally, the State of Louisiana intervened, claiming to be the owner of 213 of the consolidated bonds; and joining relator in his demand.

Respondents filed a supplemental answer, setting out more specifically the constitutional objections to the act of 1852; pointing out alleged defects in the title; and exposing the inequality and want of uniformity in the special tax on real estate and slaves alone.

Relator objected to the filing of the interventions in opposition to its demand, on the grounds, that interventions are not allowed in mandamus proceedings of the character of the present one; and that no party can be allowed to intervene unless he shows a direct personal interest which would be irreparably injured by the judgment apprehended, and unless such party could bring a direct action for the purpose of recovering the object of his intervention.

The form of action can not control the right to intervene.

Whenever there is a suit, a plaintiff on the one side demanding, and a defendant on the other side resisting, a third person may, by timely application to the court, on proper showing, be made a party. C. P. 389.

"In order to be entitled to intervene it is enough to have an interest in the success of either of the parties, or an interest opposed to both." C. P. 390.

The taxpayers, intervenors in this case, are very much interested in the success of respondents, and in opposing the demand of relator to have a large sum levied and collected as a tax on their property, as well as on that of others. The holder of the premium bonds is very much interested in opposing the mandamus and injunction which would interfere with, perhaps prevent, the levying of any tax to pay the accruing interest on his bonds.

There is no analogy between this case and that of Roudanez and others, 29 An. 271. In that case the Legislature having authorized the mayor and administrators of New Orleans to hold an election, for the purpose of taking the sense of the people as to the levy of a tax in aid of the Pacific Railroad, Roudanez and others sought, by injunction, to prevent the holding of the election. We held that this could not be done; that the Legislature had the right to submit such a question to the people, whenever it saw proper to do so; that the tax had not yet been authorized; and that plaintiffs had no interest and no right to prevent the holding of the election, the result of which might or might not be the consent of the people to the tax.

In this case the direct object is to have a tax levied and collected at once. We think the taxpayers had the right to intervene and to be heard.

Relator also objected to the filing of the supplemental answer, on the grounds, that, if the first answer be true, the second could only be a reiteration of the first, and would, therefore, be irrelevant; or, if the second answer was different from the first, it would change the issues, and, therefore, would be inadmissible.

The supplemental answer does not conflict with the original answer. It is an amplification of the original; it did not retard the trial; and it required no other or different proof than that which was required under the original. We think it was properly received.

The district court made the mandamus peremptory, but refused the injunction; sustained the intervention of Montgomery and others, and of the State of Louisiana, in so far as they joined in the prayer of relator for mandamus and injunction, and refused their prayer in other repects, and ordered the intervention of Weckerling and others to be stricken out, and that of Hunt to be dismissed as in case of non-suit.

From this judgment Weckerling and others, the mayor and administrators, and Hunt appealed separately. Relator in answer to the appeal asks that the judgment be so amended as to grant the injunction as prayed for; and be affirmed in other respects.

The issues thus presented to us for solution are of the utmost gravity; and they have been argued with great ability by the distinguished counsel representing the several parties. A review of all the authorities cited by them is not possible within the compass of a judicial decision, nor can we attempt a synopsis of the points presented and argued in a discussion which occupied five days.

Many of the matters discussed are of great public interest; but some of them we have no power to pass upon judicially on this appeal. No bonds are before us except the consolidated bonds. True, the holder of premium bonds intervened; but he does not seek to enforce his bonds; nor does he ask for any judicial recognition of them, he states that he is the holder of these bonds merely as inducement, for the purpose of showing his interest and his right to intervene. The only decree which we have jurisdiction to render, under the pleadings, is such as may be proper, in our judgment, either affirming or reversing the judgment appealed from. We shall endeavor, therefore, to limit our inquiry to the points and questions tending to the determination of the matters passed upon by the district court: the right of the relator to the relief sought, by mandamus and injunction.

Before proceeding further we think it proper to say that, in our opinion, the judgment of the circuit court of the United States, in Maenhaut and others vs. the city of New Orleans, is not *res adjudicata*; and that it does not operate as an estoppel, against the mayor and administrators, on any of the questions involved in this case. Money was collected by the city authorities for taxes, out of which a certain amount had been set apart, and deposited with the fiscal agent, to be applied to the consolidated debt. The mayor and administrators undertook, in July, 1875, out of the whole of the taxes so collected, to pay fifty per cent. on account of the interest due on the entire bonded debt of the city, if holders of the matured coupons would accept the arrangement. Maenhaut and others, holders of consolidated bonds, brought suit to prevent by injunction the proposed distribution of the tax money; and they also demanded the specific enforcement of the act of 1852.

The court decided that complainants were entitled to distribution, ratably, "of the money actually on deposit to the credit of the consolidated coupons overdue and held by them." To that extent the preliminary injunction was maintained; and in all other respects the bill was dismissed, "reserving the right of the complainants to urge at law the claims by them herein set up."

Obviously, when the taxyayers had paid the money, and the city authorities had set apart and deposited a certain amount to the credit of outstanding matured obligations, it was no longer in the power of the mayor and administrators to change its destination, or to apply the money, "actually on deposit to the credit of the consolidated coupons," to any other purpose.

We may add that in a late case, Vignier vs. the Mayor and Administrators, in the circuit court of the United States, the District Judge sitting, the judgment in Maenhaut's case was held not to conclude the city; and the mandamus prayed for by the holder of consolidated bonds, to compel the levy and collection of the special tax, was refused.

From the history which we have given of the consolidated bonds, it is manifest that they were issued for a good and meritorious consideration. They represented what remained unpaid of the old city debt, contracted prior to the separation in 1836, and the debts of the several municipalities contracted during the separation.

The consolidation of the city of New Orleans made it necessary for the city to assume these debts, because, by the consolidation, the city took and became the owner and administrator of all the means and resources of the municipalities for paying debts, and the municipalities ceased to exist as separate bodies. Assuming these debts, it was necessary for the city to put them in a shape that would be acceptable to the creditors, and would give the city, the new debtor, time to provide the means of paying them. Bonds payable at a distant day, bearing interest, constituted the only form of obligation that would meet the emergency; and they are the most usual and convenient form of municipal obligations.

The validity of these bonds is questioned on the single ground that section 37, of the act of 1852, under which they were issued, is violative of article 118, of the constitution of 1845, which declared that, "every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title."

The title is "An act to consolidate the city of New Orleans, and provide for the government and administration of its affairs." The single object of the act was to consolidate the city of New Orleans: to bring back its dissevered members, and to put an end to their separate existence by uniting them under one government. The consolidation required some provision for the government and administration of the affairs of the new corporation thus created; and all the details and particulars in the body of the act, germane to the one object, the single purpose contemplated by the Legislature, without which that purpose could not have been accomplished, are sufficiently indicated and expressed in the title. The immediate cause of the consolidation was the utter inability of the municipalities to pay the debts for which they were separately bound, and to substitute the city, in all things pertaining to municipal government, for the municipalities. The issuing of these bonds was an act of administration of the affairs of the city, devolved upon it by the consolidation, and necessarily pertaining to the government of the city.

The act of 1852 was a waiver of the condition precedent established by section 3, of the supplementary act of 1836; and a repeal of that section. But the framer of section 37 was evidently controlled by the idea that the requirement of section 26, of the act of March 8, 1836, must be enforced; and the debts of each municipality must be paid by "the inhabitants thereof." The original partition of the old city debt, under section 15, of the act of 1836, on the basis of the amount of taxes and other revenues accruing to each municipality, was apparently equitable, and we are not informed of the motives for the departure from that apportionment, in section 37, on the basis of the value of real estate within the limits of each municipality, as fixed by the State assessment roll of 1851.

Having thus fixed the quota of each municipality, by an invariable and arbitrary standard, and established the portion of the aggregated debt to be paid by each by adding to this quota the debt created by each, section 37 required the inhabitants of each municipality to pay their respective portions of the consolidated debt by an annual tax on the real estate and slaves owned by them, without respect to their value, the per centage in each municipality being in proportion to the amount of the indebtedness of each.

We have no means of ascertaining the relative values of real estate and slaves, or of other taxable property, in the several municipalities, in 1851, nor subsequently. In the nature of things the taxes imposed by the act of 1852 could not have been equal and uniform. During the forty years of the running of the consolidated bonds many of the slaves would die, and any and all of them might have been removed beyond the limits of the city at any time, so that they would not have been within the reach of city taxation: and great changes would necessarily take place in the actual and relative values of real estate in different parts of the city, while the portion of the debt to be paid by the inhabitants of each subdivision was irrevocably fixed. The assessment rolls from 1870 to 1877, inclusive, were offered in evidence; and they show how unequally and oppressively the tax as fixed by section 37 would operate now. The real estate in the First District, in 1870, was valued at $50,986,135: personal property at $16,148,140: in 1877, real estate $36,611,165; personal property at $17,187,620. In the Second District, in 1870, real estate, $29,870,975, personal property $5,118,102. In the Third District, in 1870, real estate $10,693,723; personal property, $639,282. In the Fourth District, in 1870, real estate $14,683.995; personal property $909,416: in 1877, real estate $12,374,530; personal property $800,828.

The practical operation of this mode of taxation shows how great the disparity was during the four years, from 1852 to 1855, inclusive, after which it was abandoned. The aggregate of the percentage levied on real estate and slaves for these four years, for all purposes, was: In the First District, 858⅓: in the Second, 809⅓; in the Third, 1071⅓: and in the Fourth, 765⅓: while all other taxable property in the city paid only 295, for all purposes, in these four years.

The constitution of 1845, art. 127, which corresponds with art. 123 of the constitution of 1852, and art. 118 of the existing constitution, is as follows:

"Taxation shall be equal and uniform throughout the State. After the year 1848 all property on which taxes may be levied in this State, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied."

It would be a waste of words to attempt to show the manifest inequality and want of uniformity in the tax imposed by section 37 of the act of 1852. It was flagrantly in conflict with the constitution of 1845.

Counsel for relator urge that art. 127 of the constitution of 1845 was applicable only to taxation by the State, and not to municipal taxation: and they rely on Second Municipality vs. Duncan, 2 An. 182: Cummings vs. Lafayette, 3 An, 674: and Buffington vs. Dinkgrave, 4 An. 548.

In Duncan's case, the Second Municipality, on the 29th August, 1846, levied a tax of one per cent. on all the real estate within its limits. Duncan opposed this tax as being unequal. The only proof seems to have been the admission that there was no special ordinance of the municipality assessing taxes on personal property Under the constitution of 1812 it was held that the Legislature had power to select the objects of taxation; and, that to be equal and uniform, the tax must be the same on the objects so selected.

Under the charter of 1805 the city of New Orleans had the power to tax real and personal estate, and this power belonged to the municipalities during their separation under the act of 1836. Jurisprudence has settled that it was not necessary for the city or the municipalities to exercise all the power thus conferred by taxing all property real and personal; and the tax in this case was equal and uniform on all the property selected, real estate.

The equality and uniformity thus understood had been observed in the tax in question; and it will be borne in mind that the part of article 127 of the constitution of 1845, which forbids the taxing of one species of property higher than another species of property of equal value, was expressly postponed in its effect until after 1848. Chief Justice Eustis, who was the organ of the court, did say that this article of the constitution, "by its very terms, applies to State and not to municipal taxes. It provides for the equality and uniformity of taxation *throughout the State.*" 2 An. 183. But there was no occasion to say any such thing, for the reason that the tax in question was lawful under the constitution of 1812, and the city charter of 1805; and that part of the constitution of 1845 which might have made it unlawful did not take effect until a year after this decision was rendered, nearly two years after the tax had been levied.

In Lafayette vs. Cummins, the suit was for license tax on defendant's occupation. Judge Eustis, who was again the organ of the court, referring to Duncan's case, 2 An., said that, after thorough argument, article 127 was held to be applicable to State, and not to municipal taxes. Surely there was no occasion for this dictum. The tax was levied on the occupation, under authority of an act of the Legislature; and every person pursuing that occupation was subject to the same tax. There is no other mode of levying such a tax; and it was equal and uniform, strictly within the letter and spirit of article 127.

In Buffington vs. Dinkgrave the tax in question was a city license on the occupation. The inequality of the tax was urged, mainly on the ground that a part of the year had already expired when the plaintiff became subject to the tax. It did not appear that the tax was other than that imposed on all persons pursuing the same occupation: and no law required the city to fractionize the license tax. The court disposed of the objection by a simple reference to the cases of Duncan and Cummins. But as the tax was equal and uniform, in that it was imposed alike on all persons pursuing the same occupation, it was not in conflict, but in strict accordance with article 127.

We cannot assent to the proposition that article 127 of the constitution of 1845, and article 123 of the constitution of 1852, were not applicable to municipal taxation. The decision in Duncan's case was rendered on the 15th February, 1847. The Legislature was then in session; and it hastened to place the taxpayers of New Orleans under the ægis of this constitutional provision. By act approved May 4, 1847, No. 192, page 147, it was declared that "taxation within each municipality shall be equal and uniform. After the year 1847, property on which taxes may be levied in each municipality shall be taxed in proportion to its value. No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied."

We can not regard the words "throughout the State," as used in the first *alinéa* of article 127, as limiting the operation of the great principle which it declares. On the contrary, they convey to our minds the idea that in no part of the State of Louisiana can taxes not equal and uniform be lawfully levied, whether by the State government or by the municipal governments on which the Legislature has chosen to confer taxing power. The principle of equality and uniformity in taxation is inherent in, it underlies every system of govern ment not despotic; and it acquires no additional force by the formulated expression of it in the organic law, which, in that respect, is simply declaratory.

The subsequent phraseology of article 127 seems to us to place the meaning beyond doubt. It relates to property on which taxes may be levied *in this State.* Taxes may be levied on property *in this State* for State purposes, for parochial purposes, for municipal purposes: and there is not one word in the article in question which limits its meaning to taxation by the State for State purposes, or indicates the intention of the Convention, while guarding the rights of the citizen against unequal and oppressive taxation by the State, to leave them at the mercy of police juries in the several parishes, and mayors and aldermen, or councils, in the numerous towns and cities of the State.

Certainly it would not be possible to establish an equal and uniform tax for every parish and town and city, because their exigencies and requirements and resources are different. What the constitution means, what the law of equality and uniformity requires is, that the tax, if levied by the State, must be at the same rate throughout the State, and upon the valuation of the property taxed. If levied for parochial purposes, all the property taxed in the parish must be at the same rate on valuation. If the tax be for municipal purposes, it must be at the same rate, on valuation, throughout the limits of the corporation. Any tax levied, in any part of the State, by any taxing power, which does not conform to this rule of equality and uniformity, so precisely formulated in article 127, is unconstitutional, *ultra vires*, and void.

We can not assent to the dictum in Duncan's case for another reason: and that is, that, confessedly, after the year 1848, the Legislature had no power, under the constitution of 1845, to tax one species of property higher than another species of property taxed, of equal value; and the Legislature could not confer upon a municipal corporation, the mere creature of its will, any power which it could not exercise by direct legislation.

The profound respect which we entertain for the late Chief Justice Eustis, and the other eminent jurists who composed the Court over which he presided, has imposed upon us the necessity of stating, at greater length than we should otherwise have done, our reasons for holding, in opposition to their opinion, that article 127 of the constitution did control municipal taxation, and that all taxing power throughout the State, in any and every part of the State, must be exercised in strict conformity to the principle of equality and uniformity, first formulated in that article, and preserved, substantially, in all the subsequent constitutions. See Gilman vs. Sheboygan, 2 Black, 510; Talcott vs. Pine Grove, 19 Wallace, 675, and cases there cited from State courts.

If it be conceded, and we do not care to discuss that proposition now, that under the constitution of 1845, after the year 1848, the Legislature or a municipal corporation could select one species of property, and impose a tax upon that species of property alone, excluding any other species of property made taxable by law, it would not thence follow that the tax could be so levied on that species of property, whether by the State or by a municipal corporation, that the rate on valuation could be higher in one part of the State, if taxed by the State, or in one part of the city, if taxed by a municipal corporation, than in any and every other part of the State or corporation. Our attention has not been called to any decision or dictum sanctioning any such manifest injustice. But this is precisely what the Legislature did, by section 37 of the act of 1852. The boundary between the Second and Third Districts is Esplanade street. The owner of real estate and slaves on the up-town side of Esplanade paid per centages, for the four years ending in 1855, aggregating 809⅓, while his neighbor on the opposite side of that street paid, in the same period, 1071⅓. Canal street separates the First and Second Districts. The proprietor on the upper side of Canal street paid 858⅓, while the owner of property on the lower side paid 809⅓. Felicity street is the dividing line between the First and Fourth Districts, and while the property on the lower side of that street paid 858⅓, that on the upper side paid 765⅓.

Such injustice was too glaring to escape the notice of the Legislature; and the Acts of 1856 put an end to it by subjecting all taxable property in the city of New Orleans to the same rate per cent. upon the same basis, valuation.

Counsel for relator insists that section 37, of the act of 1852, is a contract, binding on the State, the city and the bondholders. Unquestionably there was a contract, and a very simple one, between the city and the bondholders. The city assumed the debts for which the several municipalities and Lafayette had been liable; and it executed its bonds, bearing interest, payable semi-annually, for the amount. The city also undertook to raise the sum of $650,000 per annum to pay the accruing interest and to provide for the gradual extinction of the bonds. The bonds were the evidence of the contract: the contract was to pay the amount stipulated, principal and interest. That was the obligation of the contract; and that obligation is placed under the protection of the Constitution of the United States, as well as that of the State of Louisiana.

But was it a part of this contract that the city should issue no other bonds or evidences of debt, during the forty years of the running of these bonds? We think not. So long as the city paid the interest punctually, it was no concern of these bondholders what amount of debt might be contracted toward other persons. Legislative power and the sovereignty of the State may be assimilated to paternal power, which can not be surrendered at will. The powers conferred on municipal corporations are subject, and must ever remain subject to legislative control; and the legislature of to-day can not impose restrictions on the powers of a municipal corporation which a future Legislature can not modify or abrogate, except where some vested right might thereby be divested, or the obligation of some contract be impaired. In Board of Liquidators vs. McComb, the Supreme Court of the United States said:

"We are not prepared to say that the Legislature of a State can bind itself, without the aid of a constitutional provision, not to create a further debt, or not to issue any more bonds. Such an engagement could hardly be enforced against an individual; and when made on the part of a State, it involves, if binding, a surrender of a prerogative which might seriously affect the public safety. The right to procure the necessary means of carrying on the government by taxation and loans is essential to the political independence of every commonwealth." 2 Otto, 535.

These views are applicable to a municipal corporation. The Legislature of 1852 had the power to forbid the city to issue any obligation or evidence of debt; and the incapacity would continue until it was removed by the Legislature. The Legislature might refuse to confer on a municipal corporation the power to issue any bond, for any purpose; but it could not bind any future Legislature not to confer that power. We find, in point of fact, that the Legislature, two years after, in 1854, did authorize the city of New Orleans to issue its bonds for five millions, to pay for stock in railroads; and to provide for the interest on three millions and a half of that amount by special tax on real estate and slaves. This may not have been wise: it certainly proved most disastrous to the city; but the Legislature clearly had the power to remove the restrictions imposed by the act of 1852.

It did not concern the bondholders that the old city debt should be apportioned to the inhabitants of the several municipalities; because, as to them the separate indebtedeess of the municipalities had been novated and discharged by the assumption and bonds of the city. It was no part of the contract with them that the quota of the old city debt to be paid by the inhabitants of each municipality should be fixed on the basis of the value of the real estate in each in 1851; and that this quota should be added to the separate debt created by each in order to ascertain and establish the amount of the entire debt of each. These details did not concern the bondholders: they were simply the result of the design of the Legislature to make the inhabitants of each municipality pay the debts of each, as provided by section 26, of the act of 1836. It was no concern of the bondholders that the annual sum to meet the interest, and finally to pay the bonds, should be levied on real estate and slaves alone. Indeed, so far as their interests were concerned. it would seem that they would naturally have preferred to have the entire taxable property within the city limits subjected to the payment of their bonds. Why these objects were selected we do not know; but it may be that it was because real estate and slaves constituted the greater part of the taxable value, and were sufficient; and that the city desired to reserve the entire taxable capacity of every other species of property for other municipal purposes. All these details and arrangements were purely domestic; they concerned no others than the inhabitants themselves; and their whole scope and design was to adjust, among the inhabitants, their respective contributive shares to the payment of what had become the common debt of the whole city.

In the Sheboygan case, an act of 1854 provided that a tax to meet certain railroad bonds should be levied on all the taxable property in the city. In 1857 the Legislature thought proper to restrict this tax to real estate exclusively. The suit was by an owner of real estate taxed under the act of 1857, whose property had been sold for the tax. The court said the act of 1854 was not a contract. "The imposition, modification, and removal of taxes, and the exemption of property from such burdens is an ordinary exercise of the power of State sovereignty. There was no pledge, express or implied, that this power should not thereafter be exercised." 2 Black, 513.

It was not a bondholder who complained in that case: but the principle is applicable to the complaint by a bondholder, unless it was shown that the property exclusively subjected was not sufficient to pay the debt. Certainly it applies with much more force to a case, such as that we are dealing with, in which there has been not a withdrawal of property originally subjected to taxation for the payment of the bonds, but the subjection of the entire taxable property of the debtor, in lieu of the special objects originally subjected.

The Legislature of Louisiana, in 1856, chose, in the ordinary exercise of the power of State sovereignty, which it has no power to surrender, to require all property to be taxed at the same rate, on the same basis, valuation. This effectually repealed the special tax on real estate and slaves exclusively; but it did not impair the obligation of the contract with the bondholders, nor did it diminish either the sum to be raised annually for the consolidated debt, nor the resources from which that sum was to be raised. In Layton's case, 12 An. 515, this court held the act of 1856, to be in strict conformity to the constitution. It equalized taxation; and relieved the inhabitants of the burden of paying, in each district, the debt of that district, and imposed it equally on the whole city, and its entire taxable property.

The bondholders have no right to interfere with the administration of the city government, by requiring a certain order in the business of the legislative department of that government, and claiming the nullity of its proceedings if not in conformity with that order: nor can they, nor any other creditors of the city, compel the city government to levy a special tax on one species of property exclusively, for their benefit. If these bondholders ever had any right to demand the levy of a special tax, it was a tax on real estate and slaves. But the five millions of dollars worth of slaves once subject to taxation in New Orleans have ceased to be property; and the burdens of the owners of real estate would be thereby greatly increased, if the whole tax should now be levied on their property alone. Such a change was not contemplated by any of the contracting parties; and it would be equitable and just to relieve the owners of real estate of this additional burden, by subjecting to the payment of these bonds all the taxable property within the city limits, if that had not already been done by the acts of 1856.

We think that section 37, of the act of 1852, in so far as it authorized the special tax on real estate and slaves, was violative of art. 127 of the constitution of 1845, then in force. That it was repealed to that extent by the acts of 1856; that the acts of 1856, in that respect, are in strict accordance with article 127 of the constitution of 1845, and the corresponding article, 123, of the constitution of 1852; and that they in no manner impair the obligation of any contract with the bondholders, or any other person whomsoever. The levy of the special tax on real estate, as prayed for by relator, is legally impossible.

It is urged by counsel for relator that the opinion of the court in the case of Duncan, Cummings, and Buffington interpreted the constitution of 1845; and that the bondholders acquired the rights with reference to this interpretation; that art. 127 was not applicable to municipal taxation. The answer is, if this be conceded, that, in Duncan's case the court decided nothing more than the Legislature, or its creature, a municipal corporation, had the power to select a single object of taxation, real estate. In that case the object so selected was taxed equally at a uniform rate, one per cent., on the assessed value; and in the other cases the tax was equal and uniform, being a fixed sum on the trade or occupation in each case. No court in Louisiana, so far as we know, has decided that when the object of taxation has been selected it could be taxed at one rate, on a given basis, in one part of the State or city, and at a different rate, or upon a different basis, in another part of the city or State. If the constitution of 1845 did not forbid such inequality in municipal taxation, it was forbidden by the fundamental, inherent principle that taxation must be equal and uniform on the property taxed.

If the whole of section 37, of the act of 1852, entered into and constituted the contract between the bondholders and the city, we incline to the opinion that the whole contract would be void, because of the manifest inequality and want of uniformity in the special tax. But we think the contract with the bondholders was that of which the bonds are the evidence, the lawful obligation of the city to pay the principal and interest as stipulated.

Relator maintains that at the time these bonds were issued the holders were entitled by law to compel payment by mandamus: that the right to use this remedy entered into and formed part of the contract; and that they can not be deprived of this right by subsequent legislation.

Laws relating to the forms of judicial proceedings are remedial; and the form, in any case, must depend on the law in force at the time the proceeding is instituted, without regard to the law at the time the facts on which it is based occurred. If before the final decision a new law should intervene and change the form, the form originally resorted to can no longer be pursued, unless the new law expressly declares that the preexisting form shall be followed in the cases then pending. No individual can claim a vested right in the remedial process by which his demand might have been enforced at the time it accrued, when the Legislature has chosen, subsequently, to aboilsh that process. See Ludeling vs. His Creditors, 4 Martin N. S. 603; Scott vs. Duke, 3 An. 253, and authorities there cited. What the suitor has a right to claim is the use of such remedy as may be adequate to his demand, not that he shall be permitted to enforce that demand in any special form. or by any specific process. These views are fully sustained by the decision of the Supreme Court of the United States in Tennessee vs. Sneed, 6 Otto, and by many decisions of that court, and of the State courts cited at pages 73, 74. The proceeding in Tennessee vs. Sneed by mandamus was brought after that form of proceeding, in such cases, had been prohibited by the State Legislature. The Supreme Court of Tennessee refused the writ: and the Supreme Court of the United States on writ of error, affirmed that judgment.

By the Code of Practice, article 746, final judgments rendered in other States, or foreign countries, might be enforced summarily by executory process, just as mortgages may be enforced now, without previous citation of the debtor. The Legislature chose, by act of 1846, p. 163, to repeal this provision of the law. Several cases in which this form had been resorted to were pending, some on appeal, at the date of the passage of the act of 1846. This court held, in every case, that this change, pending the proceeding, even on appeal, deprived the courts of the power to proceed further. The repeal of the former law did not divest vested rights, nor did it deprive the judgment creditors of adequate remedy. It prohibited the summary process allowed by the former law; and remitted them to the ordinary form of suit by petition and citation. See Scott vs. Duke, 3 An. 253; Kilgore vs. Planters' Bank, same, vol. 693; Commercial Bank vs. Markham, same, 698; Featherstonh vs. Compton, 8 An. 285.

The law to-day authorizes the mortgagee to have the mortgaged property seized and sold by executory process, summarily, without previous citation of the mortgagor. The remedy is expeditious; and, no doubt, the right to enforce mortgages summarily makes that form of security more desirable, more valuable. The Legislature may repeal this law at any time, and remit the mortgagee to the ordinary form of proceeding, by petition, citation, judgment, and execution. Could any mortgagee pretend that this would be unlawful interference with his vested rights, or that the obligation of the contract would be thereby impaired?

In Strauss vs. Brown, 30 An. 79, a creditor sought to enforce his demand against the city of New Orleans by mandamus to compel the auditing officer to issue to him a warrant for the amount. We held that Act No. 5, of 1870, extra session, prohibited the remedy resorted to: that it compelled the creditors of the city to proceed in the ordinary form; and after having obtained judgment, that it might be registered in the office of the Administrator of Public Accounts, and paid out of the next annual budget, as required by the act.

We also decided, in that case, that the act of 1870 does not deprive the creditors of the city of adequate remedy, that is, such remedy as creditors in general have against their debtors, by suit in the ordinary form. Having obtained judgment, the creditor must proceed to have it paid in the manner required by the act, and not otherwise. The right of relator, Strauss, accrued in 1876, under the dominion of the act of 1870; and we did not find it necessary to express any opinion as to the effect of the act with respect to pre-existing contracts and obligations.

In the Carondelet Canal Company vs. the Mayor and Administrators, the relator had obtained judgment against the city in the ordinary form, and had caused it to be registered in the office of the Administrator of Public Accounts. The mayor and administrators had failed to provide for the payment in the next annual budget after the registry, as required by the act.

We held that the duty of the mayor and administrators was plain, and the right of relator absolute; and that there was no means or process by which this right could be enforced, otherwise than by mandamus. We accordingly made the manda mus peremptory, requiring the mayor and administrators to provide for the payment of this judgment out of the next annual budget. 30 An. 129.

The present case differs from that of Strauss vs. Brown in that the right of relator accrued long before the passage of the act of 1870; and it differs from the Carondelet Canal case in that relator has not obtained judgment against the city, nor attempted to enforce its rights in the mode prescribed by that act. We think this act pertains entirely to the remedy: that it is within the constitutional power of the Legislature; and that is obligatory alike on creditors of the city, whether their rights accrued prior to 1870 or subsequently.

If the seventh section of the act No. 31, of 1876, admits of no other interpretation than that it deprives any class of creditors of the city of New Orleans of the right to enforce their demands by judicial process, we think it would be in excess of legislative power, and void. But if it is susceptible of the construction that it forbids creditors, bondholders, and others, to proceed directly by mandamus to compel the levy and collection of a tax to pay the amounts due them, and requires all such creditors to proceed under the act No. 5, of 1870, we think it would not be violative of any legal or constitutional right.

If the seventh section of the act should be held to be violative of the constitution, it would not thence follow that the entire act is unconstitutional· We do not find it necessary to pass upon this act, because the views which we have already expressed suffice to dispose of this case; and we prefer to reserve any expression of opinion as to the validity of the act, in whole or in part, until the question shall be presented to us in such shape and between such parties as will give us jurisdiction. Without reference to this act, the relator is not entitled to the relief which he seeks; and that is the only matter to be determined on this appeal.

It is therefore ordered, adjudged, and decreed that the judgment appealed from be annulled, avoided and reversed, and that the demand of relator be rejected and dismissed, with costs in both courts.

CONCURRING OPINION.

DEBLANC, J. For upwards of twenty-five years, the validity of the bonds held by relator have been—again and again—acknowledged by the Legislature and the Courts of this State, by the authorities of the city of New Orleans, and by those who—until 1874—have been taxed to redeem those undisputed and indisputable obligations.

Those bonds evidence—not, the separate debt of a limited class, not a debt contracted by or in the exclusive interest of the owners of real estate, but the debt of the city, one which can be enforced—proportionally—against all of those for or by whom it was contracted, on the whole of their property, and assuredly not—as unjustly commanded by the 37th section of the act of 1852—against an arbitrarily selected fraction of the debtors, not on an arbitrarily designated species of property, not according to an assessment made since more than a quarter of a century, which no longer represents the value of even the property on which that unequal and iniquitous tax was imposed, but by the levy of a proportional tax on both the real and personal property of those who—collectively and not otherwise—are liable for that common debt, the primodial and subsisting validity of which is not and could not be successfully assailed.

With or without any constitutional enactment, as well before as since the adoption of the constitution of 1845, 1852 and 1868, a tax which—legitimately—can never be but a general and proportionate contribution, levied to carry out a public enterprise, to satisfy a public liability, neither can nor could be considered as equal and binding, unless imposed—according to circumstances—throughout the State, or throughout any of its subdivisions—on every species of property, except such as in every civilized State—is tacitly or expressly—exempted from taxation by common consent or constitutional restrictions.

The act of 1852 imparted to the consolidated bonds a validity which no subsequent legislation could or can impart; but that act did not so far suspend and paralyse the Sovereignty of the State, that—after its promulgation—the State was powerless to correct a manifest error, to discontinue an indefensible injustice, to enlarge—within its own limits or the limits of any of its subdivisions—the catagory of the taxable property, and to more effectually secure—by the creation of an additional quantity—the ultimate satisfaction of the acknowledged obligations of those subdivisions, the rights of their acknowledged creditors. This it did in 1856, in obedience to the mandate of its constitution, in accordance with the dictates of reason and justice.

In so doing, the State neither impaired, nor intended to impair the obligation of the city's contract, but merely exercised the undoubted privilege which it had and which its Legislature could not surrender, to obliterate from the statute book the partial enactment which—until then—had authorized the levy of a discriminating, unequal and unlawful tax. That was right; but it is evident—the city's liability existed before, did not arise from and has survived the repealed enactment.

A constitutional law, or any constitutional section of a law forms an inseparable part of a contract entered into during its existence; but, if any legislative act, or any section of an act which violates the Constitution of a State, can be considered as part of a contract, it drags into it a lifeless form, an absolute nullity, which may and should be disregarded, which no court could justly enforce.

The power to enter into a contract and the exercise of that power, being inseparable from the corresponding duty and obligation to voluntarily execute it or suffer its legal enforcement, it is incontestable that under either a special statute, the general law, an express stipulation or an irresistible implication—an adequate remedy, inseparable from a conceded and acquired right, is—as the right itself—vested in the creditor, to require and compel a compliance with the contract.

I concur in the opinion and decree read by Mr. Justice MARR.

DISSENTING OPINION.

MANNING, C. J. I do not concur in the opinion of my brethren, and shall state the reasons of my dissent as briefly as the nature of the case will permit.

The main question is the alleged unconstitutionality of the 37th section of the act of 1852, as violative of the constitutional requirement that taxation shall be equal and uniform. The argument is, that the legislative order to levy a special tax on real estate and slaves, (which last may be eliminated from our consideration now) and not on personalty, is a prohibited discrimination to the detriment of the former; and that the levy of any tax on an antiquated assessment, which does not represent the shifting values of a growing and ever changing city, is illegal, because unequal and not uniform. The relator meets this objection with a denial that the constitutional mandate refers to municipal taxation, and invokes the decisions of this court as supporting and maintaining the doctrine that reference was had to State taxes alone.

The leading case is Duncan's, 2 Annual, 182, where the Second Municipality had imposed a special tax of one per centum on all real estate within its limits, and the Court said, replying to the objection that it was unconstitutional because in conflict with art. 127 of the constitution of 1845;—"That article, by its very terms, applies to State, and not to municipal taxes. It provides for the equality and uniformity of taxation throughout the State. * *. * The framers of this constitution had before them the condition of the municipalities of New Orleans, with their debts, their abuses, and their wants; and their corporate existence is recognized and continued as to certain public rights by an express provision. The jurisprudence under which the present system of taxation had grown up, was before them, and the power of remedying the evils of misgovernment was left in *statu quo* with the legislature, and the convention confined itself to providing for the State government, leaving the municipal bodies, as it believed sound policy justified, under legislative control."

This judicial declaration is entitled to the greater weight from the fact that the then Chief Justice, who delivered the Opinion of the Court, was one of the framers of that constitution, whose provisions he was expounding. That decision was rendered in 1847, and although it is said, the case originated before the taxation clause of the constitution of 1845 went into full effect, the same court approved and re-affirmed it by name and in express terms in Lafayette vs. Cummins, 3 Annual, 674, and Buffington vs. Dinkgrave, 4 Annual, 549. These decisions were in 1848 and 1849, and the principle had become a rule of property when the consolidation act of 1852 was passed, and the bonds of the relator were issued. Nor is it unimportant to note in this connection that the courts of Virginia and Arkansas, whose constitutions contained an identical article with ours, ruled in the same way. Gilkerson vs. Frederick, 13 Gratt. 577. Washington vs. the State, 13 Ark. 351.

The constitution of 1852 reproduced this requirement touching the equality and uniformity of taxation, (art. 123) and in 1854 the court organized under that constitution had occasion for the first time to construe it. The doctrine of Duncan's case was abandoned, the court being divided in opinion. The Second Municipality had imposed a tax on the owners of real estate contiguous to Benton street, to pay the expense of opening it, and the court said, there was no other mode of apportioning a tax for such improvements which will be equal and uniform but that of an *ad valorem* tax on all property holders within the district, or by paying the expenses out of the funds derived from general taxation, and the tax on the real estate contiguous to the street was held invalid and unconstitutional. There were two dissentents, Slidell C. J. saying, he considered the decision in Duncan's case as settled doctrine, and no longer *res nova*. White's case, 9 Annual, 446. It is now said that the opinion in Duncan's case, so far as it treats of the constitutional mandate of 1845, is *obiter*. Slidell J. was a member of that court and concurred in the opinion, as did every member of that court, and after seven years of reflection, being also on the new bench, he was unable to discover in what respect it was *obiter*, and not only adhered to it, but declared, he did not consider the question any longer an open one.

It was not long however before the question was again presented broadly, and one of the two conflicting dicta had to be abandoned. In Yeatman vs. Crandell, XI Annual, 220, after quoting the article of the two constitutions, the court say;—

"This article refers to State taxation in its proper sense, for general or State purposes. When it says that taxation shall be equal and uniform throughout the State, it points directly to its object, which is to regulate the mode of filing the State Treasury. It does not take away the power of making local assessments for local improvements. * * * * It is notorious that an acre of land pays twice as great a tax for local purposes in one parish as an acre of equal value pays in another parish. Yet no one thinks the constitution infringed by such a state of things. It is enough that State taxes for State purposes are equal and uniform, and *ad valorem*."

White's case was thus overruled, and the doctrine of the earlier case was re-affirmed without dissent, one of the Justices who formed part of the majority in that case having renounced his former opinion and saying:—"I yield my former impressions on this point the more readily because the Supreme Court which sat under the constitution of 1845, and five of the seven judges with whom I have sat upon this bench, have concurred in holding that the article in question was not intended to apply to municipal or local taxation for local improvements." The following year the decision in Yeatman vs. Crandell was re affirmed in Jamison vs. New Orleans, 12 Annual, 346, and again in Wallace vs. Shelton, 14 Annual, 498, in which last case the court say;—"When the different municipalities were consolidated into one city, the legislature adopted the principle that it was equal and just that the city at large should pay the very unequal debts of the different municipalities. It was not in the power of this Court to say that the legislation was unconstitutional."

There is therefore no doubt—there can be none—about the judicial construction of the constitutional requirement of uniformity and equality of taxation. It may be argued that it was an erroneous construction, but that it was the actual construction, made by two courts interpreting identical articles in two constitutions, has been shewn by producing the language of those Courts. Nor can it be said that the question had not proper consideration. It was not settled without controversy, and the circumstances attending the decision in

Yeatman's case impart great weight to the manner in which White's case was overruled, and evince the deliberation which attended the unanimous re-establishment of the earlier doctrine, that municipal taxation was not referred to, nor included in, the constitutional prohibition of inequality of taxation. And if so, then the 37th section of the Act of 1852 is not open to the objection of unconstitutionality made by the defendant, because it deals with municipal taxation alone.

The action of the legislative department of the government was in accordance with its judicial construction. From the passage of the act of 1852, the requirement for a levy of the tax to pay the interest on the Consolidated Bonds, was complied with. In 1856 the charter of New Orleans was amended, and the essential provisions of the act of 1852 were re-enacted, and those touching the levy and collection of this tax were retained, and the assurances of its security and regular payment were renewed. The common council were directed to lay an equal and uniform tax upon all property, real and personal, in the city for the purposes of the act—that is to say, for the purpose of providing general revenues, etc.—but said tax, *added* to the Consolidated Loan tax, and to certain other specified taxes, shall not exceed in the aggregate one dollar and fifty cents on one hundred dollars of valuation. Sess. Acts 1856, pp. 148, 162, secs. 42, 117. The manner of levying the tax for the Consolidated Loan, as fixed by the 37th section of the act of 1852, was not interfered with nor changed. The tax was to be levied as heretofore, and when added to the general equal and uniform tax which was to be levied on all property for other purposes, the aggregate was not to exceed a specified rate.

There never was a year when this Consolidated Loan tax was not collected, although the mode of its assessment was altered. In 1870 another charter was granted to New Orleans, and all the rights of the Consolidated Bond holders, secured to them by previous legislation, were recognized, and the collection of the tax for their payment was provided for. Sess. Acts 1870, pp. 44, 48, secs. 34, 44. And in 1874 the "validity of the consolidated bonds of New Orleans is recognized in all its integrity" by a solemn legislative declaration. Sess. Acts p. 92. It was not until 1876, after the annual tax for the payment of the Consolidated Loan interest had been uninterruptedly laid for twenty years, that the General Assembly undertook to deprive the holders of the consolidated debt of all means of procuring, or of enforcing payment of their bonds, or the interest upon them.

Meanwhile, in 1875, a suit had been instituted in the U. S. Circuit Court by holders of the Consolidated bonds against the city, for the purpose of establishing their debt, and to compel a specific performance of the contract between themselves and the city, which they alleged grew out of and was contained in the 37th section of the act of 1852. They sought to have their position as creditors first in order and entitled to preference in payment out of the taxes levied upon lands, determined by a decree of court. The unconstitutionality of the act of 1852 was pleaded by the city, but the Circuit court affirmed its validity, and declared that the 37th section constituted a contract between the City and the Consolidated bondholders, which could not be impaired, and that the City was liable to those bondholders for the sums collected under it. The decree in that case is pleaded by the relator as *res adjudicata* in this. It is not necessary that I should pass upon that plea, as I am considering the defence as an original question.

In 1876 the act was passed, upon which the City relies to justify it in refusing or neglecting to levy the tax required by the act of 1852. Sess. Acts, p. 54. It prohibits the assessment or collection of any tax for the payment of any bonds, or interest of any bonds, except those styled Premium bonds of the City, and repeals all previous laws which required or authorized the council to levy any tax for the payment of any other bonds. It deprived the Consolidated bondholders by one stroke of all process for the enforcement of their alleged contract with the city, and annihilated the security which the terms of that contract assured them. No tax has since been levied to pay the interest on their bonds, or to redeem any portion of them. If the General Assembly had constitutional authority to make that enactment, the relator is remediless. If otherwise, the act of 1852 is binding upon the city.

What was the effect of the act of 1852 *quoad* the Consolidated bondholders and the State? Was there a contract made thereby between them, if yea, can any subsequent legislation invalidate it? There is no distinction between a contract of a State and a contract of an individual, and a contract which a corporation makes under authority of the State is in the same category. The engagement which the city of New Orleans made, was to pay the Consolidated Bonds which were to be issued in lieu of the previous obligations of the old city, and the three municipalities, and of Lafayette; and she stipulated as security for the performance of this engagement that a certain and specified sum should be raised by taxation each year, to be applied to the payment of the coupons, and the partial extinguishment of the principal, and as a further guaranty, the legislature in advance pronounced the nullity of all ordinances, resolutions, or other acts which the council might pass until the ordinance imposing the consolidation loan tax should have been adopted. This engagement was accepted by those who held the old obligations, and an exchange was effected. Here then was a contract made by a public corporation, under express authority of the legislature, with its creditors, who assented to it by perfecting the arrangement the legislature had in contemplation. A learned author lays down the rule controlling the rights of these contracting parties, and the obligations resting upom them thus: "When under the exercise of powers delegated, the rights of third persons have accrued, and they have assumed the form of a contract with the municipal corporation, the legislature cannot change the powers of the corporation so as to impair the rights of its creditors. The Constitution of the United States prohibits any law impairing the obligation of contracts, and while the legislature may alter or modify the powers of the subdivisions of the State, such alteration cannot be allowed to affect the creditors of the subdivisions. They are entitled to claim that the corporation shall exercise such powers as it had at the time this contract was made." Burroughs' Taxation, 427. And yet more, the rights of these creditors cannot be successfully impugned by the judiciary any more than by the legislature, for the Supreme Court of the United States holds that when the courts of a State have decided that bonds issued by a corporation are valid, if the courts of that State subsequently reverse that decision, and declare that the bonds are void, because the legislature had not the power to authorize their issue, then the rights of the holders of bonds issued during the time when the courts of the State held them valid are not affected by the subsequent adverse ruling that they were invalid. Gelpcke vs. City of Dubuque, 1 Wall. 175. Havemeyer vs. Iowa Co. 3 Wall. 294. Lamson's case, 9 Wall. 477.

In Van Hoffman vs. City of Quincy, 4 Wall. 535, the Court say: "It is clear that where a State has authorized a municipal corporation to contract, and to exercise the power of local taxation to the extent necessary to meet its engagements, the power of taxation thus given cannot be withdrawn until the contract is satisfied. The State and the corporation in such cases are equally bound. The power becomes a trust, which the donor cannot annul and which the donee is bound to execute, and neither the State nor the corporation can any more impair the obligation of the contract than any other."

In Smith vs. Appleton, 19 Wis. 495, that court, construing an act very similar to our act of 1852, under which new bonds had been issued to take the place of, and to be received by creditors, in the stead of old bonds, observed that the stringent provisions of the act to secure the payment of the interest "were obviously introduced to induce creditors to surrender their old bonds, and accept the new. These provisions, when accepted by the creditors and the city, and the new bonds were issued, constituted a most material element of the new contract. They entered into and became a part of it, and as such, are not the subject of legislative repeal or amendment, so as to impair the right or diminish the security of the creditors without their assent."

And the same principle applies to this case. In my opinion, the city entered into a contract with the holders of the bonds, the surrender of which she was inviting, which became complete when they exchanged them for Consolidated Bonds. This contract is contained in the 37th section of the act of 1852. The contemporaneous construction of the courts was, that the provisions of that section relative to the taxation upon real estate was not a violation of the constitutional requirement of uniform and equal taxation, and therefore the Legislature could not afterwards withdraw the power of taxation thus conferred for the benefit of those bondholders until the contract was satisfied, nor can the judiciary ignore its own previous and contemporaneous exposition and determination of the rights which parties have acquired under the contract to their detriment. The contract cannot be affected by any subsequent decision altering the construction of the law. Gelpcke's case, 1 Wall. 206. "If the contract, when made, was valid by the constitution and laws of the State as *then* expounded by the highest authorities whose duty was to administer them, no subsequent action of the legislature or the judiciary can impair its obligation." Havemeyer vs. Iowa Co., 3 Wall. 294. Whatever views I may entertain of the soundness or unsoundness of the construction placed by this Court upon the articles of the Constitutions of 1845 and 1852, relative to equal and uniform taxation, it is sufficient to say here that that question cannot be re-opened to the prejudice of the bondholders. Their rights are protected by the adjudications of this Court, which through a long series of decisions (with a single interruption), declared that municipal taxation was not in the contemplation of the Constitution, when it prescribed the rule of equality and uniformity, and therefore the 37th section of the Act of 1852 is a valid enactment. The language of the U. S. Supreme Court in Van Hoffman's case may be literally applied to this, changing only the date of the act under consideration: "The laws, requiring taxes to the requisite amount to be collected, in force when the bonds were issued, are still in force for all the purposes of this case. The act of 1863 (in our case, the act of 1876), so far as it affects these bonds, is a nullity. It is the duty of the city to impose and collect the taxes, in all respects, as if that act had not been passed. A different rule would leave nothing of the contract, but an abstract right of no practical value, and render the protection of the constitution a shadow and a delusion." 4 Wall. 555.

The inequality of the taxation upon the assessment of 1851 has been very vividly portrayed by the counsel of the city. At that time a large portion of what is now the most beautiful part of the city was unimproved. Streets, that then were considered the most desirable locations for the large commercial houses, have been surrendered to baser uses. On opposite sides of the same street the operation of the tax was unequal. This inequality has been demonstrated by a tabular statement of one of the counsel for the intervenors, which shows that in the Fourth District the tax is less than one half that in the Third.

If, however, it was the settled jurisprudence of this State, when the Consolidated Bonds were issued and received in exchange for old obligations, that the article of the Constitution requiring uniform and equal taxation, had reference to State taxation alone, the rights of these bondholders cannot be affected by a change of opinion of the judiciary upon that question. Nor can the Legislature disregard, ignore, or impair the contract which was made between the city and the bondholders. The rights of the bondholders were secured and set forth in the contract. The power of the Legislature to make the provisions, which constituted their security, was judicially declared to be within the authority of the Constitution, and it is too late now to attempt to deprive the bondholders of the guaranty which every department of the government gave them, that they held a just debt, amply secured, and which should be paid in the manner stipulated by their debtor.

Writ of error granted to the Supreme Court of the United States.

THE ARTICLES OF THE CONSTITUTION OF THE STATE BEARING ON TAXATION.

“ Taxation shall be equal and uniform throughout the State:
“ after the year 1848, all property on which taxes may be levied
“ in this State shall be taxed in proportion to its value, to be
“ ascertained by law. No one species shall be taxed higher
“ than another of equal value on which taxes shall be levied.

* * * * * ”

—*Constitution of Louisiana*, 1845, *Art.* 127.

To the same effect Constitution of 1852, article 123.

Constitution of 1868, article 118, as far as it is pertinent to the issue was—

“ Taxation shall be equal and uniform throughout the State.
“ All property shall be taxed in proportion to its value, to be
“ ascertained as directed by law. The General Assembly
“ shall have power to exempt from taxation property actually
“ used for church, school or charitable purposes,” etc.

The act of 1852 in so far as it attempts to create the special tax on real estate and slaves, the imposition of which is claimed by relator, and which was adjudged unconstitutional by the Supreme Court of Louisiana.

Session Acts 1852, p. 53, is as follows:

“ SECTION 37. That the debt of the general sinking fund,
“ commonly called the old city debt, and the debt of the three
“ municipalities, whether in the form of bonds, notes, interest
“ coupons, cash warrants, or any other species of obligation
“ whatever, shall be assumed and paid by the city of New Or-
“ leans, and said city is hereby declared liable therefor. The
“ mayor, comptroller and treasurer, and the chairmen of the
“ finance committees of the two boards of the common council,
“ shall constitute a commission to be called the commissioners
“ of the consolidated debt of New Orleans; and they shall
“ have power to issue bonds of the city of New Orleans, hav-
“ ing not more than forty years to run, with interest, payable
“ at such place as may be agreed on between said commission-

" ers and the parties to whom the bonds are issued, in semi-" annual coupons, in exchange for any bonds, obligations or " debts of the old corporation, or of any of the municipalities, " whether matured or not; or to sell the new bonds and apply " the proceeds to the payment of the matured debts of the old " corporation or of the municipalities, but to no other purpose. " The bonds thus issued shall form a stock, to be called the " consolidated debt of New Orleans. At the time this act goes " into operation, an exact and detailed statement of the indebt-" edness of the old corporation, and of each municipality, shall " be filed in the office of the comptroller, by the secretary of " the board of liquidators and the municipal comptrollers re-" spectively, when the commissioners of the consolidated debt " shall proceed to divide the debt of *the old corporation* between " the several municipalities, in proportion to the assessed value " of real estate within the limits of each, according to the State " assessment roll for 1851. The amount thus apportioned to " each, together with its individual indebtedness at the time " this act goes into operation, shall constitute the separate " debt of each municipality, and shall be known as the debt of " Municipality No. 1, No. 2 and No. 3. The Common Council " shall annually in the month of January pass an ordinance " to raise the sum of $600,000 by a special tax on real estate " and slaves, to be *called the consolidated loan tax;* and " the rate per cent. of said tax in each municipality shall " be in proportion to the indebtedness of each. All ordi-" nances, resolutions or other acts passed by said council, after " the first day of January in each year, shall be null and void, " unless the ordinance imposing the consolidation loan tax " shall have been previously passed. At the end of each and " every year, any surplus of the consolidated loan tax remain-" ing in the treasury, after the payment of all the interest and " the expenses of the management of said debt, shall be ap-" plied to the purchase, from the lowest bidder, of such bonds " *issued under this act* as have the shortest period to run; and " the common council shall have the right of rejecting all bids " demanding more than the face of the bonds; for which pur-" pose public notice shall be given by the comptroller, in the "official gazette for thirty days, inviting proposals from bond-"holders for the sale to the city of the bonds herein described. "From and after the passage of this act, no obligation or evi-"dence of debt of any description whatever, except those "herein authorized, shall be issued by the city of New Orleans, "or under its authority; nor shall any loan be contracted, un-"less the same be authorized by a vote of a majority of the "qualified voters of said city, which shall be taken in the man-"ner prescribed by the city council, after ten days' proclama-"tion by the mayor, in the newspaper chosen by the com-"mon council; and no ordinance creating a debt or loan shall "be valid, unless for some single object or work distinctly "specified therein, and unless such ordinance shall provide "ways and means for the punctual payment of running inter-"est during the whole time for which said debt or loan shall "be contracted, and for the full and punctual discharge at "maturity of the capital borrowed or debt incurred; and such "ordinance shall not be repealed until principal and interest "of the capital borrowed or the debt incurred are fully paid "and discharged."

The supplementary legislation of 1852, annexing the City of Lafayette, in so far as it bears on the tax, is as follows (Session Acts, p. 56):

"The debt of the City of Lafayette shall be assumed and "paid by the City of New Orleans, and said city is declared "liable therefor, the amount of debt to be ascertained and its "payment provided for in the same manner as the debt of each "municipality of New Orleans, is ascertained and provided for "in the act to which this is a supplement, and in raising an-"nually the tax for the payment of the debt of New Orleans "an additional sum of $50,000 shall be raised for the purpose "of providing for the debt of the City of Lafayette now added "to the debt of New Orleans, etc.

ACT No. 93 OF 1856.

Session acts, p. 68 referred to in the opinion of the Supreme Court:

Whereas, the General Assembly has been memoralized by citizens to equalize taxation in New Orleans, and to limit the rate of taxation to 1½ per cent., and whereas, such taxation will produce an amount ample and sufficient to pay annually the consolidated and railroad debts of said city and lease a surplus for municipal purposes; and it is deemed prudent and expedient by the General Assembly to place some restraint on municipal taxation and to render the same equal and uniform according to the principles of justice and the provisions of the Constitution of the State.

Therefore be it Resolved, That from and after the passage of this act, it shall not be lawful for the Common Council of New Orleans to levy any tax exceeding one dollar and fifty cents on every hundred dollars of the assessed valuation of real estate and slaves within the limits of said city, and subject to municipal taxation thereon; provided, such an amount is raised thereby as shall be sufficient to pay the interest upon the present city debt, together with the gradual reduction of the capital of the consolidated debt, as required by the laws now in force.

Section 2d declared it shall not be lawful to levy any tax on personal property and slaves exceeding the rate specified in the first section, and added, but in no case shall it be lawful to levy any tax whatever, whether on real estate or slaves, or movables, which shall not be equal and uniform within the limits of or through the several districts of said city as now organized.

EXTRACT FROM CITY CHARTER OF 1856.

Section 46, Sess. Acts, p. 148.

That the Common Council of New Orleans shall for the purposes of this act, once and not oftener in each and every year, levy an equal and uniform tax upon all property, real and personal, in said city, but said tax added to the consolidated loan tax and the special tax for payment of the annual interest issued by the city for certain railroads, shall not exceed one dollar and fifty cents on one hundred dollars of value; provided it be sufficient to pay the interest on the consolidated and railroad bonds of the city.

ACT No. 5 OF 1870.

To limit and restrict the power of the Courts to issue writs of fieri facias and mandamus against the city. and referred to in the opinion of the Supreme Court.

Section 1. *Be it enacted*, That from and after the passage of this act, no Court within this State shall have authority or jurisdiction to hear, entertain or enforce any summary process or proceeding, or writ, or order of mandamus, or any order or proceeding in the nature of an order or writ of mandamus, either against the Comptroller or Deputy Comptroller or any auditing officer of the city of New Orleans, the object of which shall be either directly or indirectly to obtain or compel the payment of money; or against the Treasurer, Assistant Treasurer, or any officer or officers charged with the disbursement of the moneys of the city of New Orleans, the object of which shall be either directly or indirectly to enforce the payment of money claimed to be due from the city of New Orleans to any person, persons or corporations, but all actions or proceedings for the recovery of any sum of money claimed to be owing by the city of New Orleans, shall be in the ordinary form of actions instituted against the city of New Orleans as a corporation, and not against any department or officer thereof, and shall be conducted in the same manner as ordinary actions.

Sec. 2. That hereafter no writ of with execution or fieri facias shall issue from any of the courts of this State against the City of New Orleans, to enforce the payment of any judgment, but the final judgment against the City of New Orleans, condemning it to pay any sum of money, when executory, shall have the effect of fixing and establishing the amuont of plaintiff's demand, and copy of the judgment and of its finality shall be filed in the office of the Comptroller, who shall receive and register the same and when so registered it shall be the duty of the Comptroller to warrant on the treasurer or disbursing officer of the corporation for the amount due, without any special appropriation therefor by the council, provided that there be sufficient money in the treasury specially designated or set apart for that purpose in the annual budget of expenses, required to be made by the act to consolidate the city, approved 20th March, 1856 (this act required the Council annually to adopt its budget on estimate of receipts and expenses for the current year).

Sec. 3. That in case the amount designated in the annual budget for the payment of judgments against the city, shall have been exhausted, the Common Council shall have power if they deem it proper, to appropriate from the money set apart in the budget for contingent expenses, a sufficient sum to pay said judgment or judgments, but if no said appropriation be made, then all judgments in the order they shall be filed and registered, from the first money annually set apart for the purpose.

Section 4 gives an action of damages against the comptroller or treasurer, or auditing officer of the city, for any failure of duty or neglect or malfeasance on their part any person or corporation shall be delayed in payment of his or its judgments and by which any damage has been sustained.

ACT No. 53, OF 1874.

Impugned by the relator in its petition. Session Acts, p. 92.

An Act to postpone the levy and collection by the city of New Orleans, of a tax for the sinking fund for the purchase of its bonds; to authorize the administrators to modify the last bud get and tax levy, and to repeal conflicting laws.

Section 1. Be it enacted that until the mouth of December, 1876, it shall be the duty of the administrators of New Orleans, to estimate, levy or collect any tax for a sinking fund for the purchase of any of its bonds; provided, that this act shall in no case be construed to hinder, delay or affect the prompt payment of the interest on the bonds of said city as the same shall mature; and provided further that the validity of the consolidated bonds of the city of New Orleans is hereby recognized in all their integrity, it being the object of this act to afford temporary relief to the taxpayers of New Orleans in their embarrassed condition and not to detract from or impair the rights of the bondholders or others.

Sec. 2 makes it the duty of the administrators to modify the budget and tax levy which may be adopted during the present session of the Legislature.

ACT No. 31, OF 1876, IMPUGNED BY THE RELATOR IN ITS PETITION.

No. 31.] **AN ACT**

To adjust, regulate and provide for the bonded debt of the city of New Orleans; to authorize the exchange of bonds of the city of New Orleans for other bonds to be issued on the plan known as the Premium Bond plan; to adopt and give legislative sanction to the said plan, as set out in Ordinances Nos. 3130 and 3233, Administration Series of the city of New Orleans, approved on May 25 and August 31, 1875; to provide a fund to meet the semi-annual payments of the said bonds, known as premium bonds; to create a commission in the interest of creditors, and to give said commission the direction, control and management of the semi-annual allotment under said Premium Bond plan; to limit by contract the contracting of debt by the city of New Orleans; to limit taxation for all purposes therein, and to give relief to arrear tax-payers; to provide for the exchange of said premium bonds for other bonds in a certain contingency.

Whereas, the total debt, bonded and floating, of the city of New Orleans, has accumulated to an amount exceeding twenty-three millions of dollars, resulting from the occurrence of the civil war, and from reckless expenditures of public moneys;

Whereas, under the depressing influence of the consequences of the late war, and the disasters produced by the overflows in this State, and other causes, the taxable property of the city of New Orleans has become so reduced in value as to require taxation at the rate of at least five per cent. per annum to liquidate the debt as established by the acts authorizing the various issues of the same; and

Whereas, the levying of a tax at so exorbitant a rate renders the collection impossible;

Whereas, the continuation of the levying of a tax beyond the ability of the property to pay leads to a further destruction of the assessable property of the city, and the consequent shrinkage of the common pledge of the creditors, tending to a continuation of the present embarrassment of the city affairs, and ultimate practical bankruptcy;

Whereas, the City Council of the city of New Orleans have adopted a plan for the liquidation of the city indebtedness, looking to the payment of the creditors in full, obtaining thereby the indulgence necessary for the public well-being and the maintenance of the public honor; therefore

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the Mayor and Administrators of the city of New Orleans, or such other officers, aldermen or administrators as may hereafter be ordained or established, be, and they are hereby authorized and directed to exchange all recognized and valid bonds of the city of New Orleans and the late cities of Jefferson and Carrollton for bonds known as the premium bonds of the city of New Orleans, in accordance with the plan adopted by the City Council, and approved by the Mayor on the twenty-fifth of May and thirty-first of August, 1875. The said premium bonds shall be dated the first of September, 1875, and bear interest at the rate of five per cent. per annum, from the fifteenth of July, 1875; they shall be signed by the Mayor, the Administrator of Finance, and the Administrator of Public Accounts, as commissioners of the consolidated debt, and countersigned, when issued, by such parties as the Council have designated heretofore, or may hereafter designate, with the authorization of the supervising committee hereafter named.

Sec. 2 not important.

Sec. 3 not important.

Sec. 4 not important.

Sec. 5 not important.

Sec. 6. Be it further enacted, etc., That it shall be the duty of the City Council, in the month of December of each year, or in the annual budget annually adopted for the ensuing year, to include an amount sufficient to meet and pay the principal and interest of the premium bonds, together with premium included, in the several allotments of series and premiums fixed for such year by the aforesaid ordinances and this act.

It shall be the duty of the Council annually to levy an equal and uniform tax on all the assessed property within the corporate limits of the city, at a rate sufficient to provide the amount included in the budget as aforesaid, and said tax so levied shall constitute a special fund to be used for no other purpose than the payment of said bonds and interest on the said premiums comprised in said allotment, and the fund so raised shall be placed to the credit of an account to be called the premium bond account, and no money from said fund shall be paid out except on the joint authority of the commissioners of the consolidated debt. The said tax to be raised shall be denominated the premium bond tax, and shall be separately mentioned in the tax rolls and receipts, provided, that the taxable power of the corporation of the City of New Orleans for all purposes including general administration, school, police, lighting, salary of officers, court expenses and every other purpose of government, including the sum to be raised to pay the premium bonds, as above stated, shall never, until the full, complete and final payment of the said premium bonds, exceed the rate of one and one-half per centum on the dollar of all the assessed value of property subject to taxation within the limits of the said City of New Orleans. The above limitation on the taxable power of the corporation is hereby declared to be a contract, not only with the holder of the said premium bonds, but also with all residents and taxpayers of the said city, so as to authorize any holder of said premium bonds, resident or tax-payer to legally object to any rate of taxation in excess of the rate herein limited. It being also a part of the consideration of this c n-sideration of this contract that the City of New Orleans shall be incompetent to incur any debt or obligation, as now provided by the constitution of this State, until the final payment and extinction of the premium bonds aforesaid.

ASSAILED BY RELATOR IN ITS PETITION.

Sec. 7. Be it further enacted, etc., That no tax for the payment of bonds or interest on bonds other than that authorized by the preceding sections, shall be levied either for the year

1876, or any year or years thereafter by the City of New Orleans, and that all existing laws requiring or authorizing the City Council to levy any tax whatsoever for bonds or interest on bonds, other than said premium bonds, be and the same are hereby repealed; and it shall be hereafter incompetent for any court to mandamus the officers of said city to levy and collect any interest tax other than that provided in this act or in case of such mandamus, by a receiver or otherwise, to direct the levy and collection of any such tax.

SEC. 10. Be it further enacted, etc.. That no city property of any kind shall hereafter be sold or conveyed in any manner except the proceeds be applied to the reduction of the bonded or floating debt.

SEC. 11. Be it further enacted, etc., That in addition to the obligation of the said city to provide annually the sum required for the execution of the Premium Bond plan, at least a tax of one half of one per cent. annually, to be used in the execution of the provisions of this act; and if [the] product of said half of one per cent. be more than adequate for the payment of the drawn premium bonds, and the premiums as above provided, then the surplus to be used in retiring the outstanding bonds; provided, said half of one per cent. taxation be considered as part of the one and a half per cent. taxation to which the taxing power of the city is limited by this act; the intention of this section being to limit the city taxation to one and one-half per cent. annually until the entire extinction of the bonded debt; to authorize the Council to levy annually out of the one and one-half per cent. taxation a sum adequate to the annual execution of said Premium Bond plan, and after the year 1881 to levy at least one-half of one per cent. for the carrying out of said plan, and to distribute the surplus realized therefrom, if any, in retiring the outstanding bonded debt.

SEC. 12. Be it further enacted, etc., That whenever under the operations of this act the bonded debt of the city of New Orleans shall be reduced below eight millions of dollars, the creditors holding the same shall be entitled to convert the same into bonds bearing six per cent. interest per annum, payable in twenty years from their date, to be dated after the reduction aforesaid, the interest to be paid semi-annually. A sinking fund of at least two hundred thousand dollars to be provided for along with the interest by adequate annual taxation; all the limitations hereinabove provided on taxation and debt to be applicable after the issue of said bonds until payment thereof.

Sections 13, 14, 15 and 16 are unimportant here.

(Signed) E. D. ESTILETTE,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved March 6, 1876.

(Signed) WM. P. KELLOGG,
Governor of the State of Louisiana

A true copy:

P. G. DESLONDE,
Secretary of State.